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RÉSUMÉ

Multi-Cultural Societies and Federalism

1. The experience of multi-cultural federations in the Commonwealth is especially relevant to Canada because in these countries the federal solution was adopted specifically to meet the needs of multi-cultural societies, and because among multi-cultural federations only these have attempted, like Canada, to combine federal and parliamentary systems. (Chapter 1).
2. Analysis of a federation as a single interdependent system provides a more comprehensive framework for understanding a federal political system and its relation to its society. (Chapter 2, sections 1, 2, 3).
3. A federal system can be properly understood only if it is related to the social forces which it attempts to express and channel. (Chapter 2, section 4).
4. As in Canada, so in India, Pakistan, Malaysia, Nigeria, Rhodesia and Nyasaland, and Switzerland, has cultural regionalism based on linguistic, racial or religious distinctiveness assumed the proportions of sub-nationalisms which provided a major motive for provincial autonomy. (Chapter 3, sections 1, 2).
5. In some federations linguistic regionalism and religious regionalism have reinforced each other, while in others they have cut across each other thus weakening linguistic regionalism. (Chapter 3, section 2).

6. In most federations the strength of linguistic regionalism has been affected by (1) regional economic interests, (2) variation in the size and wealth of the regional groups, (3) clashes between the political radicalism and conservatism of different cultural groups, and (4) differences in degrees of modernization. Any solution of linguistic and cultural tensions has, therefore, required attention to these related factors. (Chapter 3, section 3).
7. Ultimately the preservation of multi-cultural federal systems has rested not simply on reconciling the different cultural groups, but also upon generating a common consensus to which the different linguistic and cultural groups are willing to commit themselves. (Chapter 3, section 4).
8. Larger provinces have been more likely to assert themselves at the expense of the central government. (Chapter 4, section 2).
9. Disparities in the size and wealth of provinces have tended to exacerbate inter-provincial tensions (Chapter 4, section 2).
10. Federations composed of only two or three provinces have been particularly prone to instability. (Chapter 4, section 2).
11. Zonal pyramids within a federation have usually been rejected as too complex. (Chapter 4, section 2).

12. Generally federal systems have been most successful where the provincial units have reflected, or have been reorganized to reflect, as far as possible the most fundamental regional interests in the society. (Chapter 4, section 3).
13. In practice the existence of some minorities within provincial units has been unavoidable. (Chapter 4, section 3).
14. Since intra-provincial minorities have proved unavoidable, most federations have established a wide variety of devices to protect these minorities. These devices have included (1) the guarantee of individual rights, (2) the guarantee of collective rights to specified cultural minorities regarding language, education and the provincial public services, and (3) special provisions regarding representation in provincial legislatures. (Chapter 4, section 4).
15. Frequently, the central government has been assigned a special role as the guardian of intra-provincial minorities. (Chapter 4, section 4).
16. Sometimes inter-governmental councils have been established to promote the interests of inter-provincial minorities. (Chapter 4, section 4).
17. In the distribution of legislative and executive authority a simple compromise between economic centralization and cultural provincialization has proved to be no longer a realistic possibility. (Chapter 5, section 1).

18. In most of the newer multi-cultural federations there has been a greater decentralization of functions involving public expenditure than in Canada. (Chapter 5, section 1).
19. The characteristic feature of the newer multi-cultural federations has been an interlocking responsibility of both levels of government over a wide range of functions including many economic matters. (Chapter 5, section 1).
20. Federal finance has been a central issue in internal tensions because financial resources define the limits of what provincial governments may do for their own cultural groups. (Chapter 5, section 2).
21. In the newer multi-cultural federations the general trend, by comparison to Canada, has been towards more decentralized expenditure (both on cultural and economic grounds), but more centralized control of taxing powers. Provincial autonomy has been maintained by substantial unconditional transfers adjusted at periodic intervals by inter-governmental councils or commissions. (Chapter 5, section 2, and Chapter 6, section 2).
22. Equalization of provincial financial resources has proved an essential element in the minimization of grievances among regional cultural groups. (Chapter 5, section 2).
23. Where within a federation there have been contrasts in the strength of provincial pressures for autonomy, some federations have experimented with giving certain provinces more autonomy than others. (Chapter 5, section 3).

24. Most of these experiments have fostered rather than reduced tension. The tendency in practice has been to reduce differences between provinces in their degree of autonomy, or for the more autonomous units to secede. (Chapter 5, section 3).
25. Where certain provinces are given greater autonomy than others experience indicates that special care is needed to ensure that the more autonomous provinces continue to feel an integral part of the federation. (Chapter 5, section 3).
26. Because of the interpenetration of the activities of central and provincial governments which has been necessary in order that provinces might have sufficient economic powers to preserve their cultural distinctiveness, most federations have found it desirable to establish a variety of inter-governmental institutions. (Chapter 6, section 1).
27. There have almost always been finance commissions and councils to adjust the allocation of resources and to co-ordinate public borrowing. (Chapter 6, section 2).
28. There have also usually been councils, with representatives of both levels of government, to co-ordinate general economic policies and development. (Chapter 6, section 3).
29. In most federations there have been a variety of commissions, councils, boards, agencies and conferences each concerned with specific areas of common concern to both levels of government. (Chapter 6, section 4).

30. In some federations councils and conferences have been established for general inter-governmental consultation and specifically to consider ways of fostering federal cohesion. (Chapter 6, section 5).
31. Independent tribunals, usually supreme courts, have been established to settle disputes between levels of government over their constitutional authority. (Chapter 6, section 6).
32. An essential feature of these federal systems has been the creation of central institutions capable of generating a genuine consensus among the diverse cultural groups within the federation. (Chapter 7, section 1).
33. Bicameral central legislatures in which senators have usually been appointed by the provincial governments have helped to bring regional cultural interests to bear upon central legislation. (Chapter 7, section 2).
34. A balanced representation of regional linguistic and cultural groups in the central cabinet has nearly always been found necessary. (Chapter 7, section 3).
35. But ultimately, where there has been a parliamentary cabinet system, the most important factor for federal cohesion has been the ability of the political parties themselves to aggregate the diverse cultural groups. (Chapter 7, sections 2, 3, 6).

36. An important factor in developing a sense of commitment to federal unity has been the organization of the central civil service in such a manner that a balanced regional representation is achieved. In many cases this has required special allowances for those cultural groups who, because of their educational systems, may be handicapped in the competition for public employment. (Chapter 7, section 4).
37. Most federations have striven for a federal capital city which could serve as a focal symbol of the federation, and be a place where people from all the major linguistic and cultural groups could find the cultural atmosphere congenial rather than alien. (Chapter 7, section 5).
38. In those federations where the language of major regional groups has been denied recognition as a federal language, bitterness and tension has resulted. (Chapter 8, section 1).
39. In many federations two (or even three) 'official languages' have been recognized for central and inter-provincial purposes. (Chapter 8, section 1).
40. In some federations, in addition to the 'official languages' some further languages have been recognized as 'languages of the federation'. (Chapter 8, section 1).
41. In most multi-cultural federations there have been guarantees of justiciable individual rights against linguistic, racial, religious or regional discrimination,

and also guarantees of collective rights to specified minorities. These have been directed as much at protecting intra-provincial minorities as at protecting provincial majorities and have, therefore, been applied to limit provincial as well as central governments. (Chapter 8, section 2, and Chapter 4, section 4).

42. While constitutional guarantees have helped to allay minority fears, the success of multi-cultural federations has ultimately been directly related to the extent to which majorities within the federations have been willing to show a spirit of toleration and compromise. (Chapter 8, section 2).

Chapter 1

INTRODUCTION

1. Topic of study

In many societies where the forces for integration and for separationism have been at odds with each other, the adoption of a federal political system as the solution has been a popular formula. It makes possible the large political and economic unit required in order to sustain genuine political independence and facilitate rapid economic development while at the same time assuring the varied linguistic, racial and religious communities some autonomy. This study is concerned with an analysis of experience in other multi-cultural federations in order to see what light their experience may throw on similar Canadian problems.

2. The relevance of such a study

There are a number of countries where a federal political system has been adopted particularly to meet the needs of a society with a multi-cultural character. Of the three classic federations which have been in operation for more than half a century - the United States of America, Switzerland and Australia - only Switzerland is fully relevant to this study since both the United States and Australia are essentially mono-cultural. In the latter two countries it was the continental expanse, the local economic interests, and a previous existence as distinct colonies which lay at the root of the adoption of a federal form of union. In Switzerland, however, one of the strongest continuing motives for the federal character of its political

system has been the existence of German, French and Italian-speaking groups concentrated in different cantons.¹ Among the newer federations, Germany, like the United States and Australia, is fundamentally mono-linguistic, although regional variations in religious and cultural outlooks had a bearing on the adoption of a federal system in West Germany in 1949, as evidenced by the inclusion within the fairly limited exclusive legislative authority of the states of such fields as education, culture, and religious affairs. But there are a number of newer Asian and African federations, established within the Commonwealth since 1947, where the federal solution was adopted specifically to meet the needs of a society in which the linguistic and cultural divisions were, if anything, far sharper than in Canada. Particularly significant among these experiments have been India, Pakistan, Malaya and later Malaysia, Nigeria and Rhodesia and Nyasaland.²

India is the most dramatic example for, according to the 1951 census, it contains some 60 languages or dialects spoken by more than 100,000 persons each, and the Eighth Schedule to the Constitution specifies fourteen languages as "the languages of India". Indeed, in India an attempt has been in process since 1947 to unite by means of a federal system ten linguistic groups,

¹ See Appendix 2, table 2, for the distribution by cantons of linguistic groups in Switzerland.

² See Appendix 2, tables 3, 4, 5, 6, 7, 8, for the distribution of linguistic or racial groups in these new federations. For a detailed comparative study of these new Asian and African federations (without reference to their relevance to Canadian problems) see R.L. Watts, New Federations: experiments in the Commonwealth (Oxford, 1966).

each of which is as large as the French-speaking population of Canada, and each of whose language is as different from the others as French is from English.¹

In Pakistan, the separation of East and West Pakistan by a thousand miles has made provincial autonomy imperative. But an equally strong pressure has been the sharp cleavage between West Pakistanis, speaking a variety of languages related to Urdu and largely Middle-Eastern in character, and East Pakistanis, Bengali-speaking and South-east Asian in outlook.² Moreover, these cultural differences have been sharpened by the resentment of the Bengalis, chafing at the continued dominance of the western province in their political and economic life, and at being treated as "a colony" by the central government remotely located in the west.

Both in the original Federation of Malaya established in 1948 and the wider Federation of Malaysia created in 1963, the most significant political feature has been the communal character of the population.³ Since the language, religion and related social customs of the Malay, Chinese, Indian, and indigenous Bornean communities within Malaysia are sharply distinct and often incompatible with each other, communal tension has coloured the entire political scene. Each of the states itself

¹ See Appendix 2, table 3.

² See Appendix 2, table 4.

³ See Appendix 2, tables 5 and 6.

contains a variety of races, but there are significant regional variations in the strengths of the different communities and these give the states their distinctiveness within the federal system. Of particular interest to Canadians was the attempt within a Malay-dominated and conservative Malaysia to accommodate the special local interests of Singapore with its overwhelmingly Chinese population, its distinct economic base, and its strongly radical outlook to politics, by giving Singapore substantially greater autonomy than the other states. This experiment of an "associated state" lasted only two years, however, before mounting tension led to the separation of Singapore again from the federation.

Nigeria too is a country marked by sharp linguistic and cultural diversity.¹ Most of the north is dominated by the Hausa language, Muslim belief and law, and the highly organized emirates of the Fulani dynasties. In the south where Christianity and Animism are the prevailing religions, the culturally-conscious Yoruba-speaking peoples predominate in the west and the rival Ibo peoples are the largest ethnic group in the east. It was the growth after 1946 of the political consciousness of these ethnic groups, expressed in the rise of political parties with a distinctively regional focus, which led to the adoption of a federal system of government in Nigeria in 1954. For a decade Nigerian stability depended on an uneasy coalition of regional parties and its ability to overcome a series of crises rather

¹ See Appendix 2, table 7.

than on the absence of political strife. But when the 1963 census confirmed the permanence of Northern Nigeria's stranglehold on central politics, the willingness to compromise was destroyed, culminating in the destruction of the federal system in early 1966.

For a decade between 1953 and 1963 the Federation of Rhodesia and Nyasaland in Central Africa represented the attempt to reconcile the interests of determined white and black nationalism by means of a federal system.¹ The experiment, in many respects so different from Canada, is of some significance, however, for the failure to achieve the intended multi-racial co-operation stemmed from a mutual misunderstanding of the goal of "partnership" set forth in the preamble to the Constitution. To the African "partnership" meant equal opportunity for all individuals throughout the federation, but the European settler conceived it as the co-operation of "the senior and junior partner", or of "the rider and his horse".²

It may be argued, and with some justice, that Canadian problems are unique, and that, therefore, experience in these other federations is of little relevance to our problems. This is to some extent true of the federations in Europe. Switzerland, with its population of some five million and its area of 16,000 square miles, is relatively small and compact by comparison with

¹ See Appendix 2, table 8, for distribution of races.

² See B.T.G. Chidzero, "The Meaning of Good Government in Central Africa", in C. Leys and C. Pratt (eds.), A New Deal in Central Africa (London, 1960), pp. 170-181.

the continental sweep of Canada. Germany although containing religious diversities is by comparison with Canada linguistically relatively homogeneous. When one turns to the Asian and African federations, their relevance at first sight seems even more remote. To begin with, their societies are based on non-western cultures very different from the cultures of either English or French Canada. Secondly, the Asian and African federations are all economically underdeveloped and thus at a very different stage of economic development from Canada. Thirdly, some encompass populations which range from at least double that of Canada, as in Nigeria, to over four times that of Canada in Pakistan, and twenty times that of Canada in India, while at the other extreme the electorate of the Federation of Rhodesia and Nyasaland was smaller than that of the largest single riding in Canada, and even the widened Federation of Malaysia contained less than half of Canada's population.

Nevertheless, although any reference to experience in these other federations will certainly have to take account of these differences from the Canadian situation, this should not be allowed to obscure the point that certain factors make the experience of these other federations peculiarly relevant to the study of bilingualism and biculturalism within the Canadian political system. To begin with, unlike Belgium, Finland, or South Africa which are not political federations, or the U.S.S.R. which because of its mono-party system represents a peculiar federal system, the European federation of Switzerland, and the Asian and African federations of India, Pakistan, Malaysia, Nigeria,

and Rhodesia and Nyasaland are each an example of the resort to a federal political solution specifically in order to accommodate the problems of a multi-lingual and multi-cultural society. Indeed, in each the multi-cultural character of the society was a major factor leading to the adoption of federal institutions. Consequently, most of these federations have wrestled with just the sorts of problems Canadians are concerned with: not only problems of "recognized national languages", education in different languages, and the cultural impact of a federation-wide economy, but also the distinctively federal problems which arise from the attempt to accommodate the needs of a multi-cultural society by means of a federal political system, such as the relation of provincial autonomy to cultural distinctiveness, the place of minorities and majorities within provinces, the impact of the federation-wide economy on provincial autonomy, co-operative and consultative relations between levels of government, and the institutions and processes by which the different linguistic and cultural groups may participate in the establishment of a consensus in central politics. To take only one example, there is already in India a considerable history of commissions, committees, and studies concerned with just these problems.¹

¹ See, for instance: Constituent Assembly of India, Reports of Committees, Three Series (New Delhi, 1947-9); Report of the Linguistic Provinces Commission (Dar), (New Delhi, 1948); Indian National Congress, The Report of the Linguistic Provinces Committee (New Delhi, 1949); White Paper on Indian States (New Delhi, rev. ed. 1950); Report of the Finance Commission, 1952 (New Delhi, 1952); Public Administration in India, Report of a Survey (P.H. Appleby), (New Delhi, 1953); Report of the States Reorganization Commission, 1955 (New Delhi, 1955); Re-examination

Two further points make the experience of the more recent Commonwealth federations of particular relevance to Canadians. First, most of the new federations have attempted to copy certain features of Canadian federalism and in a number of instances to improve upon the Canadian model. Statesmen founding the new federations have often commented on the special relevance to their situation of the Canadian experience because, unlike the United States or Australia, Canada was a multi-cultural federation. Much of the impact of the Canadian example upon the Asian federations has been indirect, being derived through the influence of the Canadian model upon the form and phraseology of the Government of India Act, 1935, which in turn was the model most influential upon the members of the Constituent Assemblies of India and Pakistan and upon the members of the constitutional commissions and committees in Malaya. This indirect influence, coupled with a direct consideration of Canadian precedents and also difficulties, led in all three Asian federations to the enumeration of state as well as central powers, the constitutional assignment of relatively extensive powers to the central government, special provisions regarding minority languages and education, the inclusion of certain central checks or controls

of India's Administrative System (Appleby), (New Delhi, 1956); Report of the Official Language Commission, 1956 (New Delhi, 1957); Report of the Finance Commission, 1957 (New Delhi, 1957); Report of the Committee of Parliament on the Official Language (New Delhi, 1958); Report of the Finance Commission, 1961 (New Delhi, 1962); Statement Issued by the National Integration Conference, 1961 (New Delhi, 1962); Report of the Committee on Emotional Integration (New Delhi, 1962); Annual Reports of the Commissioner for Linguistic Minorities (New Delhi, annually).

over state governments, the appointment of state governors by the central government, essentially unitary judicial systems, the inclusion in India and Malaya of some nominated members in the second chambers, and virtually unlimited central powers to implement treaties.¹ The new federations in Africa have followed the Canadian model less closely and relied more on the examples of Australia and the United States, but even in the African federations the founding statesmen studied Canadian experience and took it into account. In view of this, it may be of considerable value in tackling our own problems to examine the operation of institutions patterned after those of Canada and also to see which innovations have been successful and which have not. Indeed, we may learn not only from the successes of these federations but also from their failures and difficulties which may provide some guide to the pitfalls to be avoided.

The second reason the new Commonwealth federations are of particular relevance for Canada is that it is only in these examples among other multi-cultural federations that we find the combination of federal and parliamentary institutions which was first attempted in Canada. The non-parliamentary character of

¹For examples of the consideration of Canadian precedents and experience see: Constituent Assembly of India, Debates, vol. 5, p. 164; vol. 7, pp. 37, 43; vol. 11, p. 647; Constituent Assembly of India, Draft Constitution (1948), p. 192, note; Report of the Official Language Commission, 1956 (New Delhi, 1957), pp. 13, 16-7; A.K. Brohi, Fundamental Law of Pakistan (Karachi, 1958), pp. 20, 223-6, 245, 267-70, 685; Report of the Constitution Commission, Pakistan, 1961 (Karachi, 1962), para. 68; Col. no. 330/1957, Report of the Federation of Malaya Constitutional Commission, 1957 (London, 1957), para. 137; H. Miller, Prince and Premier (London, 1959), p. 137.

the Swiss and American executive branches of government is sufficiently significant in the politics of those two federations to make their experience in some important respects less relevant than that of the other Commonwealth federations for Canada. Patrick Gordon Walker has even gone so far as to argue that the adaptation of parliamentary institutions to federalism has produced what amounts to a new variant of political institutions radically different from other federal systems.¹ Traditionally writers have contrasted federal and unitary systems taking the United States and the United Kingdom as the norms of each.² In the American federal system the concept of limited sovereignty permeates the whole system, authority being divided not only between federal and state governments but also between the branches within each level of government. By contrast, the characteristic feature of the British unitary system is the concentration of all legal authority in the sovereign parliament and its cabinet. In Canada there has developed what amounts to a hybrid radically different from either the United States or the United Kingdom. The American notion of limited sovereignty has been applied in the division of authority between central and provincial governments, but within institutions of each level of government the British notion of the sovereign parliament and its executive has been applied. This means, for

¹Patrick Gordon Walker, "Federalism in the Commonwealth", Journal of the Parliaments of the Commonwealth, Vol. XLII, No. 4, October 1961, pp. 351-9.

²See for instance A.V. Dicey, Introduction to the Study of the Law of the Constitution (London, 10th ed., 1961), ch. 3.

instance, that the central institutions designed for producing a federation-wide consensus operate in a manner vastly different from those in the United States or Switzerland. The significance of the new Commonwealth federations is that they provide the only examples outside Canada where the combination of federal and parliamentary institutions has been applied in a multi-lingual and multi-cultural society.

3. The scope of this study

This study will be concerned, therefore, particularly with an examination of other multi-cultural federations in the Commonwealth as it relates to the bilingual and bicultural character of Canadian federalism. Where appropriate for purposes of comparison, however, reference will be made to Swiss experience in order to point up the effect of a different form of federal institutions in a multi-cultural society, or to Australian and West Indian experience as examples of the operation of parliamentary federal institutions within a relatively mono-cultural society. The presentation throughout will be comparative, dealing by topic with the issues which face the Canadian federal system. Consequently, in order to provide the background for this approach an outline of the evolution and operation of the federal system in each of the new Commonwealth federations is provided separately in Appendix 5.¹

¹ For a general picture of the Swiss federal system see G.A. Codding, The Federal Government of Switzerland (Cambridge, Mass., 1961) and Christopher Hughes, The Federal Constitution of Switzerland (London, 1954). For a general account of the Australian political system see J.D.B. Miller, Australian Government and Politics (London, 2nd ed. 1958), and S.R. Davis (ed.) Government of the Australian States (Melbourne, 1960).

Chapter 2

THE CONCEPT OF A FEDERAL POLITICAL SYSTEM

1. The Significance of the Concept

Before we can examine the manner in which federal political systems may accommodate the needs of a multi-lingual or multi-cultural society, a preliminary discussion about the concept of a federal political system is needed both for the sake of clarity and to set out the framework for the analysis.

Such a preliminary clarification is especially necessary because the term 'federal' has often been used loosely and imprecisely. Most people using the term have in mind a form of political association in which two or more states constitute a political union with a common government, but in which the member states retain a measure of autonomy. But within this general definition the term federal has been used in a wide variety of more specific senses.¹ In one of the oldest meanings of the term, 'federation' has been used as synonymous with 'confederacy', referring to the loose linking together by treaty of sovereign states for military, economic or diplomatic purposes. The confederacies of ancient Greece, the Swiss Confederation before 1848, the United States of America before 1787, and the German Empire 1871-1918 are examples of this form of political union, and this usage for the term

¹ For a history of ideas of federalism see S. Mogi, The Problem of Federalism, A Study in the History of Political Theory (London, 1931), 2 vols.

'federal' is still current in Europe where the supra-national co-operative agencies are often referred to as federal. Sometimes, at the other extreme, federal government is taken simply as being equivalent to decentralized government. Thus, the term 'federal' has been applied in this way to the political systems at one time or another of Argentina, Brazil, Mexico, Venezuela, Weimar Germany, the U.S.S.R., Yugoslavia and the French colonial federations, even though in each case the central government exercised over-riding authority. Given such a wide range of uses for the term 'federal', a preliminary analysis of the concept itself is clearly needed.

2. The Dualistic Concept of Federalism

Students of political institutions and constitutional lawyers, attempting to make the term 'federal' more precise, have usually defined it as referring to a form of government midway between the two extremes, distinguishing it from 'confederacies' on the one hand and 'decentralized unitary government' on the other. One of the clearest statements of this view is presented by K. C. Wheare.¹ Taking the United States Constitution of 1787 as his prototype, he defines the federal principle in this way:

¹K.C. Wheare, Federal Government (London, 4th ed., 1963) especially Part I. For other statements agreeing substantially with Wheare see W.P.M. Kennedy, The Constitution of Canada (London, 1922), pp. 407-8; J. A. Corry, Democratic Government and Politics (Toronto, 2nd ed. 1951), pp. 551-3; J. Quick and R. R. Garran, Annotated Constitution of the Commonwealth of Australia (Sydney, 1901), p. 333.

By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.¹

Federal government, for Wheare, means a form of government in which the general and regional governments within a country are neither subordinate to the other. This form is contrasted with confederacies in which the general government is subordinate to the regional governments, and unitary forms of government in which the regional governments are subordinate to the general government.

It is from this definition of the federal concept, as involving two co-ordinate levels of sovereignty within a single country, that the traditional theory of federalism, which I shall hereafter refer to as 'dual federalism' was developed. From the concept of dual sovereignties - general and regional - existing side by side, each separate in watertight compartments and in its own sphere independent of the other, a number of implications about federal political systems have traditionally been taken to follow. If each level of government is independent within its own sphere, then the other governments must be limited to their own spheres. Each government must act directly on the people. There must be a demarcation of the authority of each government set forth in a supreme written constitution. An independent judiciary is necessary to interpret this constitution and umpire conflicts between governments. Any amendment to the federal aspects

¹Wheare, Op. cit., p. 10.

of the constitution must require the approval of both levels of government.

This dualistic concept of federalism has the advantage of clarity. It also appears to provide an apparently simple political solution for dealing with the problems of a society beset with sharp linguistic or cultural diversities. The notion of two co-ordinate levels of government, each independent of the other and confined to its own sphere suggests that by adopting a federal system each linguistic group in its own province might be left free, without interference from the central government, to deal with matters of linguistic or cultural concern, while yet obtaining the military, diplomatic and economic benefits of common action placed in the responsibility of the central government. That this notion of a federal system has been influential in other multi-cultural federations is clear from the frequency with which the dualistic definition of the federal principle supported by K. C. Wheare has been echoed in speeches in the constituent assemblies of India and Pakistan, the writings of Nigerian nationalists, and the reports of constitutional committees and commissions in Malaya, Central Africa and the West Indies.¹

Nevertheless, this concept of federal government has a fatal flaw. In practice, in the older federations, as Wheare

¹ See, for example, Constituent Assembly of India, Debates, vol. 5, p. 37; Col. no. 255/1950, British Caribbean Standing Closer Association Committee. Report (Rance), (London), para. 22; Cmd. 8233/1951, Central African Territories: Report of Conference on Closer Association, para. 46.

himself has had to concede,¹ and in the newer federations it has simply proved impracticable.

3. Interdependent Federalism

Developments in the American, Australian and Canadian federations during the twentieth century have given rise to a new concept of 'co-operative federalism'. In these older federations the development of communications, the extension of federation-wide commerce, the development of an interdependent economy, and the growth of national sentiment, have resulted, especially in periods of war and of economic crises, in extensive inter-governmental administrative consultation and co-operation and at least partial financial dependence of state and provincial governments upon the central governments. Consequently, the notion of 'dual federalism', of separate central and provincial governments acting, with only minor exceptions, in distinct water-tight compartments each independent of the others has proved an inapplicable myth. In the words of J. A. Corry: "Under the heat and pressure generated by social and economic change in the twentieth century, the distinct strata of the older federalism have begun to melt and flow into one another."² The 'layer cake' notion of federalism has had to be replaced by the 'marble cake'. Interdependence and co-operation among the governments within these

¹Wheare, Op. cit., pp. 242-3.

²J. A. Corry, "Constitutional Trends and Federalism", in A. R. M. Lower and others, Evolving Canadian Federalism (Durham, N.C., 1958), p. 122.

federations has in practice become a characteristic feature.

This trend was first recognized in the 1930's by American scholars who coined the term 'co-operative federalism' to refer to it.¹ It should be noted that the term used by these scholars referred not only to the development of interaction and co-operation between the two levels of government, but also to the trend towards greater centralization because of the financial dependence of provincial governments upon central governments for assistance through conditional grants and joint-cost programmes. The connotations of the term as used more recently by Canadian politicians are different, for in this latter use 'co-operative federalism' has referred to a devolution of responsibilities to the provinces, although implicit in this decentralization is the requirement for inter-governmental consultation and co-operation if such a devolution is to be effective.

Within the last five years, scholars studying American federalism have further redefined the federal concept. The first scholars to write about 'co-operative federalism' in the United States had treated this development as a new trend of the mid-twentieth century. Recent writers, such as

¹ See, for instance, Jane Perry Clark, The Rise of a New Federalism (New York, 1938); Iowa Law Review, Vol. XXIII (1938), pp. 455-616, "A Symposium on Co-operative Federalism"; G.C.S. Benson, The New Centralization (New York, 1941). Later the term was also used by A.H. Birch, Federalism, Finance and Social Legislation in Canada, Australia and the United States (Oxford, 1955), pp. 304-6; J. A. Corry, Op. cit.

M. J. C. Vile¹ and D. J. Elazar,² however, have gone further in their rejection of the old dualistic definition of federalism. They have suggested that the traditional conception of federalism as requiring a sharp delineation of responsibilities between two independent sets of sovereignties never did fit the practice in the United States. Elazar argues that in the nineteenth century, as in the twentieth century, administrative co-operation and political interaction between federal and state governments was always a dominant characteristic of the American federal system, despite legal pronouncements to the contrary. In the twentieth century, under modern economic and social conditions, these features of the American federal system have simply been further accentuated.

This conception of federalism I shall refer to as the concept of 'interdependent federalism'. This view parts company with the notion of 'dual federalism' on three points. First, it finds fault with the traditional definition as too legalistic. Because those who accepted the concept of 'dual federalism' concentrated their attention upon the constitutional structure and especially the legal division of authority, the pronouncements of the courts on this division, and the formal amendments to the constitution altering this division, they paid insufficient attention to administrative arrangements which inevitably required inter-governmental co-operation,

¹M.J.C. Vile, The Structure of American Federalism (London, 1961), ch. 10.

²D.J. Elazar, The American Partnership (Chicago, 1962), ch. 1

to the political attitudes of citizens affecting the adoption of policies at both levels of government, and to the role of political parties bridging the two tiers of political activity.

Secondly, the more recent view points up a logical error in the assumptions made by those who elaborated the concept of 'dual federalism'. According to the earlier view, a federal system was defined as one in which neither level of government is subordinate to the other. It was assumed, then, that if one government were dependent on another that would mean that the former was subordinate. Consequently, the requirement was stipulated that each level of government must be independent of the other in its own sphere. As long as the dependence of one government upon another is one-sided this presupposition is valid enough. But there is another possibility which was overlooked. If both levels of government are each dependent upon the other - interdependent - then dependence does not necessarily imply the subordination of one to the other. Independence is not, therefore, the only alternative to subordination; mutual dependence or interdependence is another alternative. In the latter case, where each level of government is to some degree dependent on the other, neither tier would be independent but neither would be subordinate. This, in fact, is the contemporary situation as it has evolved in most of the older federations. Provincial and state governments have become increasingly dependent upon the central governments for their finances, but central governments have had to rely more and more upon the administrative co-operation of state and

provincial governments for the implementation of federation-wide policies. The activities of central governments have expanded dramatically, but so also have those of the provincial and state governments. This pattern of mutual dependence or inter-dependence between the two levels of government within a federal system has in practice also been found necessary in the newer multi-cultural federations.¹ It should be emphasized that while the theories of 'dual federalism' and 'interdependent federalism' appear in some respects to present sharply contrasting positions, both are derived from the same fundamental idea. Both are based on the premise that within a federal system, the central and provincial governments should be co-ordinate in the sense that neither is subordinate to the other. The difference between the two versions is chiefly one of emphasis: 'dual federalism' views the two sets of government primarily as equal rivals, 'interdependent federalism' views them primarily as equal partners. What lies at the root of both theories is the premise that in a federation, neither level of government is subordinate to the other.

A third point of difference is that implicit in the conception of 'interdependent federalism' is the rejection of the view that the definition of a federal system can correspond to some single ideal type or model in terms of which all actual governments might be classified as 'federal', 'quasi-federal',

¹The evidence for this claim will become apparent in subsequent chapters, but for a full exposition of this view of the newer federations see R. L. Watts, New Federations: Experiments in the Commonwealth (Oxford, 1966), esp. chs. 1, 10, 14.

or 'non-federal'. There is some value and interest in having a precise definition in terms of which institutions might be classified. But when we move away from the enterprise of stipulative definition or from constitutional law, to the study of political and administrative practice and social attitudes, this sort of precise classification is of less value. Politicians and nation-builders are less concerned with the niceties of theoretical distinctions and tend to be pragmatic in their approach to political problems. In practice, they have been not at all averse to the creation of 'mixed solutions' or of 'institutional hybrids'. This is illustrated by the difficulty which upholders of the notion of 'dual federalism' have had in finding pure examples of such federations.¹ The danger is that such an approach may concentrate attention upon efforts at fruitless classification rather than upon the study of how these political systems actually operate and why they were instituted.² There is, in fact, not just one but a whole range of institutional arrangements by which the principle of co-ordinate governments within a federal system may be implemented. There may be variations in the number and relative size of provincial units, in the manner in which responsibilities are distributed among governments, in the scope of functions exercised by each

¹Wheare, Op. cit., ch. 2.

²Such a criticism of Wheare himself would be unfair for he does examine the operation of federal governments, but some other writers commenting on Wheare appear to have become absorbed with the problem of classification.

level of government, in the degree and kinds of interdependence and interaction between governments, in the arrangements for protecting and adapting the distribution of functions among governments, and in the organization of the institutions designed to generate a consensus on matters of federation-wide concern. Moreover, as statesmen in the old and new federations experiment in new or changing situations with fresh ways of applying the federal idea, new forms and adaptations are bound to result. Just as the combination of federal and parliamentary institutions established in Canada in 1867 represented a radically new version of federalism, so every federation has been an experiment and a continuing one.

To recapitulate, I am taking the federal concept to be the principle of political organization by which concurrent desires for territorial integration and diversity within a society are accommodated by the establishment of a single political system within which central and provincial governments possess co-ordinate authority such that neither level is legally or politically subordinate to the other. Other forms of political systems may recognize or express elements of unity or diversity, but make one level of government subordinate to the other. This statement modifies the traditional definition of federalism in three respects: first, political as well as legal relations between governments are relevant in determining co-ordinate status; second, governments may be dependent on each other, that is interdependent, so long as the dependence of one level of government on the other does

not become so one-sided as to involve subordination; third, the federal principle as stated may be expressed by a whole range of institutional arrangements suitable to different conditions and is not limited to one pure model.

4. Federal Political Systems and Multi-cultural Societies

A significant advantage of the concept of 'interdependent federalism' is that it gives a more comprehensive framework for the study of a federation as a single political system. The notions of 'dual federalism' and 'co-operative federalism' tended to encourage one-sided accounts of the operation of federal systems. 'Dual federalism', for instance, stresses the division of functions between the two levels of government, and taken by itself this can be misleading. By directing attention at the self-contained operation of each tier of government, it encourages one to neglect and even overlook the point that these governments operate within a single political system and that inevitably there are many points of contact and interpenetration between them. The notion of 'co-operative federalism', on the other hand, by focusing upon the elements of co-operative interaction between levels of government encourages a neglect of the degree to which these governments may rival each other and draws attention away from the importance within a federal system of the processes by which a consensus from among conflicting regional groups is arrived at in order to produce federation-wide policies. The picture of a single federal system composed of a variety of interdependent and interacting institutions enables us, however, to see in

perspective the different ways in which the linguistic and cultural groups act, both as partners and as rivals in the political processes of a multi-cultural federation.

If we look, then, upon a federation as a single political system within which the various linguistic and cultural groups are at the same time both partners and rivals, the role of these groups can be better understood. Considered in this light, there are three aspects to the working of a federal political system each of which is fundamental. First, because the various groups cannot agree to be partners over the whole range of political action, a federal system involves a compromise in which those functions over which a general consensus can be reached are assigned to the central government while other functions over which the partners 'agree to differ' are left as the responsibility of the provincial governments. Thus, the distribution of functions and responsibilities between levels of government is one fundamental aspect of any federal system.¹ Second, since in practice the roles of partnership and of rivalry cannot be totally isolated from each other, the activities of the two levels of government inevitably inter-penetrates. A study of inter-governmental relations, therefore, is not merely important, but a fundamental aspect of the study of any federal system.² Third, a federal system represents above all a form of partnership, and, therefore, an

¹This aspect is dealt with in Chapter 5.

²This aspect is dealt with in Chapter 6.

especially crucial aspect is the process through which the diverse linguistic and cultural groups participate in reaching a federation-wide consensus. Without effective machinery for generating this wider consensus, the partnership is likely to dissolve into a mere struggle between rivals.¹

Implicit in this analysis is the premise that no federal political system can be properly understood unless it is related to the social forces which it attempts to express and channel. It has been said that: "the essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces - economic, social, political, cultural - that have made the outward forms of federalism necessary."² To anyone studying the multi-cultural federations, this statement will appear a truism. A study of the problems of multi-lingualism and multi-culturalism within federal political systems must, therefore, look not only at the political system itself, but also at the complex relationship between the total political system and its underlying society. The interests of various regional, linguistic and cultural groups represent the demand inputs which the federal system converts into policy as an output. The causal relationship between the society and the federal political system, however, is a complex and dynamic one. The distinctive pressures within the society force their expression upon the

¹This aspect is dealt with in Chapter 7.

²W. S. Livingston, Federalism and Constitutional Change (Oxford, 1956), p. 1.

political institutions. But the political institutions, once created, will themselves shape and influence the pattern of society both by determining the channels through which social pressures may most easily flow, and by the 'feed-back' effect upon society of the policies which the political system generates. Moreover, this complex relation between a political system and its society is never static, but one of continual dynamic interaction producing over time changes in the balance of social and political forces.

The degree and type of diversity within societies varies from country to country and any given community will fit somewhere on a hypothetical spectrum of societies ranging from the highly integrated to the highly diversified.¹ The more diversified the society, the greater is the need for providing some effective political means of articulating the diverse interests. Thus, a federal system, if it is to survive, will need to be able to accommodate the particular demands of the society on which it is based. The spectrum of societies will, therefore, require a spectrum of varying federal solutions, each adapted to the needs of its own society. Moreover, since the balance of forces within a federal society rarely remains constant but alters under the pressures of economic and social development, a federal political system must be flexible and able to adapt

¹The idea of such a spectrum was first suggested by W. S. Livingston, Op. cit., pp. 3-5. It is further developed in R. L. Watts, New Federations: Experiments in the Commonwealth, especially pp. 93-5.

to changing social conditions and demands. In the next two chapters, therefore, we shall be concerned with an analysis of the relative significance of different social forces,¹ and with the political units by which these have been expressed in multi-cultural federations.²

¹Chapter 3

²Chapter 4

Chapter 3

FEDERAL SOCIETIES

1. Introduction

In the preceding chapter it was suggested that the study of multi-cultural federalism must involve an analysis of the relation between the federal political system and the society on which it rests. This chapter will be concerned, therefore, with an assessment of the significance of linguistic and cultural issues among the social demands which federal political systems attempt to accommodate. It should be added, right at the outset, that no attempt will be made to lay out in detail in this chapter a complete sociological analysis of each of the multi-cultural federal societies, but rather attention will be focused on significant features which these societies exhibit in common, in so far as these are relevant to present Canadian concerns.

2. Diversity of language and culture as a motive for provincial autonomy

As in Canada, so in India, Pakistan, Malaysia, Nigeria, Central Africa and Switzerland linguistic, racial and religious minorities who feared discrimination at the hands of numerical majorities but were unable themselves to support effectively a genuine separate independence, have sought provincial autonomy within a federal political system as a way of preserving their own distinct identity and way of life.

In each of these countries the multi-lingual and multi-cultural character of the society has frequently been cited by statesmen as the crucial characteristic making a federal political system necessary.

The assumption that it is the linguistic and cultural diversities which have been fundamental in these federations is not difficult to comprehend. Language barriers are certainly barriers to communication and understanding between different groups within a society. But the problem goes even deeper than the mere question of communication. Language itself is fundamental to the activities which are distinctively human.¹ It is through language that the individual fulfils his capacity for expression. It is through language that man not only communicates but achieves communion with others. It is language which by its structure shapes the very way in which men order their thoughts coherently. And it is language which makes possible social organization. Thus a common language is the expression of a community of interests among a group of people. It is not surprising, then, that any community which is governed through the medium of a language other than its own has usually felt itself to some extent disenfranchised, and that this feeling has always been a potential focus for political agitation. Moreover, like skin-colour, language is an easily identifiable badge for those who wish to take

¹On the function of language for the individual and for society see especially R. B. LePage, The National Language Question (London, 1964), chs. I and II.

issue with a different group, and thus it provides a rallying point even for issues which are basically not those of language or race.

The significance of language as a basis of social activity is well portrayed by W. H. Morris-Jones in his analysis of the diversity on the Indian scene:

"It is true that some of the big cities are cosmopolitan -- in the sense that employment has attracted men from all parts of India: Madras much less than Delhi, Bombay or Calcutta. But it is striking to notice that, apart from the exigencies of work or business, few things cause the regional groups to mix. Outside office hours, the Bengali in business in Bombay, the Tamil in a government job at Delhi will meet almost invariably fellow Bengalis, fellow Tamils. At all-India conferences and gatherings, delegates when left to themselves quickly form regional groups -- a little knot of Malayalees, a compact circle from Bihar. And, indeed, what could be more natural? It is, firstly and above all, a matter of language: a language other than one's own mother tongue has a dampening effect on social intercourse; Hindi (except in the regions where it is itself a mother tongue -- that is, in the north-central zone) is not yet widely used except perhaps in the more ordinary transactions; English is still available to many but, except for very few, it is not really fun. With a language goes a way of speaking, a way of making jokes, a whole common world of allusions and references so necessary to easy and enjoyable intercourse. As in Europe, only a tiny few are 'at home' in a language other than their own; a Gujarati girl married to a Punjabi will achieve this state -- but such marriages between regions are rare. It is also a matter of a shared acquaintance with people and places and the possibility of communicating common memories of family and childhood. For the cultivated, it will be a matter of a common literary and musical heritage -- though admittedly this is less important for some regions (Punjab, Gujarat perhaps) than for others. It is even a question of food -- not unimportant where social intercourse is concerned. Even the European quickly learns to distinguish between the dishes of Kashmir and those of Madras, the cooking of Maharashtra and that of Bengal; the Indian's preference for his own region's food will often amount to a great distaste for that of others. Distinctive forms of dress (in part related to contrasting climates),

festivals that have a peculiar regional significance, different codes of family and social behaviour, special attachment to regional heroes and episodes of the past -- all this and much more goes to make vivid and profound the contrasts that exist between one part of India and another." 1

The importance of language as a basis for the desire for provincial autonomy has been clearest in India, Pakistan, Nigeria and Switzerland, for in these countries regional loyalties appear to have been rooted in language. In India, for example, the pressure for linguistic regionalism expressed itself even in the days before independence when the Congress Party found it necessary to base its own internal organization upon the regional linguistic groups rather than upon the existing provincial units. Since 1947 the explosive impact of language has been felt in the tension between the generally Hindi-speaking peoples of the north and the Dravidian-speaking peoples of the south,² and in the demands of regional linguistic groups for the reorganization of state boundaries in order that the states might represent homogeneous linguistic units. Indeed, the pressure for 'linguistic states' mounted to such a degree, that Prime Minister Nehru after nearly a decade of resistance was forced to concede reluctantly to the complete

¹W. H. Morris-Jones, Parliament in India (London, 1957), pp. 18-9.

²The Dravidian group of languages are Telugu, Tamil, Kannada, and Malayalam spoken mostly in the southern states. See Appendix 2, Table 3.

reorganization of state boundaries in 1956 in order to preserve the union.¹ The political force of language was also apparent in the necessity to recognize in the Constitution itself thirteen different regional languages, each spoken by several millions, as 'languages of India'.²

In Pakistan, too, linguistic diversity has been a potent political force. Linguistic regionalism has been at the root of the continued demands of East Bengal for greater provincial autonomy and of its insistence upon the recognition of Bengali as an official language equal in status to Urdu. The growing dissatisfaction of the Bengalis with the failure of the central government to treat them equally expressed itself in the elections of 1954 when the total rejection by the Bengalis of the Muslim League shattered that party's national dominance. For a decade afterwards, party politics (when not prohibited by martial law) took on a distinctively regional character. The different languages spoken within West Pakistan have also been of some significance. These languages -- especially Punjabi, Sindhi, Pushtu and Baluchi -- provided the basis for the cultural differentiation within West Pakistan³ and for

¹ States Reorganization Act, 1956 (37/1956); The Constitution (Seventh Amendment) Act, 1956. See also Report of the States Reorganization Commission, 1955 (New Delhi, 1955). See also chapter 4 below.

² The Constitution of India, 1950, Eighth Sched. See Appendix 6. A fourteenth language so specified was Sanskrit, but this was not a regional language.

³ See Appendix 2, Table 4.

what resistance there was to the unification of the variety of western provinces and states into a single province in 1955. In this case, however, the need to counterbalance the Bengali-speaking majority in the east sufficiently undermined the separatism of the different linguistic groups within the west so that the multi-lingual province of West Pakistan has survived since its creation.

In Nigeria too, where some 248 different languages are spoken, linguistic diversity has clearly been a major political force. The three major linguistic groups -- the Hausa in the north, the Yoruba in the west, and the Ibo in the east -- each represent the dominant ethnic group in one of the three original regional political units.¹ Moreover, these three groups have together dominated the politics of the country. Not only did each group provide the core for one of the three major political parties -- the Northern People's Congress (N.P.C.) based its strength on the Hausa north, the National Convention of Nigerian Citizens (N.C.N.C.) had its greatest strength in the Ibo east, and the Action Group was founded in the Yoruba west² -- but it was the rivalry of these three politicized cultural groups, and especially the fear by each

¹ See Appendix 2, Table 7.

² In 1962 the Action Group split and thereafter western regional politics was a struggle between it and the United Peoples' Party. The U.P.P. with the addition of some western N.C.N.C. elements in 1964 became the Nigerian National Democratic Party (N.N.D.P.).

of domination by the others, which produced the tensions and strains within the Nigerian federal system. Furthermore, although each of these three ethnic groups was predominant within its own region, there were other significant linguistic minorities within each region,¹ and from these minorities came considerable political pressure for their own separate ethnically homogeneous autonomous states.

In Switzerland, also, linguistic diversity has been a basic factor in the establishment and maintenance of the cantons as autonomous political units. It is significant that in every one of the cantons, one language group possesses a clear majority. Only in three cantons - Fribourg (65.7 per cent), Valais (65.0 per cent), and Grisons (56.2 per cent) - does the dominant linguistic group represent less than 77 per cent of the cantonal population.² Moreover, although German is the predominant tongue spoken by 74.1 per cent of the Swiss people, the Constitution of Switzerland has had to recognize German, French and Italian as 'official' languages.³

In the two other federations under comparison - Malaysia and Rhodesia and Nyasaland - the basis for cultural regionalism was fundamentally racial rather than linguistic. In

¹ See Appendix 2, Table 7.

² See Appendix 2, Table 2.

³ These three languages together with Romanche are further recognized as 'national' languages.

Malaysia, however, differences of language have reinforced differences in race. Thus differences in physical feature and skin-colour among the Malays, Chinese, Indians and indigenous Borneans have been accentuated by the fact that these different communal groups also speak different languages. The issue whether Malay should become the sole official language has always been a politically controversial one. In addition, although each of the states of Malaysia contains a variety of races, there are significant regional variations in the relative strength of the various communities. On the Malayan peninsula the major racial and linguistic groups are the Malays who constitute 50 per cent, the Chinese who form 37 per cent, and the Indians who make up 11 per cent. The Malays are overwhelmingly dominant in the rural north-east and north-west, while the three communal groups are in a mixture along the west coast where most of the Chinese and Indians are concentrated. It is not surprising that Malay nationalism in the form of Malay opposition to the scheme for a unitary union in 1946, and of communalist appeals by the Pan-Malayan Islamic Party should have flourished most in the northern states. The exclusion of Singapore from the Federation of Malaya in 1948, the restricted citizenship status of Singapore citizens and the concurrent accession of the Borneo states insisted upon by the Malays before Singapore was permitted to join the Malaysian Federation in 1963, and the expulsion of Singapore from the federation in 1965, were all related to Malay fears that Singapore, with its predominantly Chinese population,

would upset the delicate racial balance in the peninsula. Furthermore, the more extensive autonomy granted to the states of Sabah and Sarawak within Malaysia was a recognition of the racial and linguistic distinctiveness of their indigenous peoples. The significance of racial and cultural issues in Malaysian politics is illustrated by the Alliance pattern of its ruling political party which is an alliance of three communal parties in Malaya - the United Malay National Organization (U.M.N.O.) which is the senior partner, and the Malayan Chinese Association (M.C.A.) and Malayan Indian Congress (M.I.C.) - to which since 1963 a number of local Bornean parties have also been allied.

In Central Africa the fundamental racial differences were less closely related to linguistic ones, although they were reflected in fundamental differences in cultural outlook. The basic racial division was between the settlers and the indigenous Africans, and this division cut across all three territories within the federation. There were significant differences, however, in the degree to which the settlers had established themselves in each territory. The proportion of settlers varied from one in sixteen in Southern Rhodesia to one in fifty-two in Northern Rhodesia and one in 588 in Nyasaland. As a result there were contrasting traditions in racial policy, for in Southern Rhodesia the settlers had achieved de facto control while in the two Protectorates the Colonial Office continued to maintain ostensibly a policy of the 'paramountcy

of native interests'. African opposition in the northern territories towards federation was largely provoked by the fear that it would mean the extension of settler control and racial policies. It was this anxiety which led the British government to insist upon a federal rather than a unitary political system as the settlers had originally advocated. But in addition to this basic racial division between settlers and Africans there was also the linguistic diversity of the different African groups themselves. Although English served as the lingua franca for them, the principal African groups in the three territories had substantially different dialects and customs. This not only hampered unity among the Africans of Central Africa, but when the federation broke up ultimately resulted in the two distinct independent African states of Malawi and Zambia.

While language or race has provided the basis for cultural diversity in India, Pakistan, Nigeria, Switzerland, Malaysia and Central Africa, we must not underestimate the impact of other cultural factors upon political regionalism in these federations. As in Canada, religious differences have often reinforced linguistic ones. Moreover, in the newer federations of Asia and Africa the religious differences such as those between Hindus and Muslims on the Indian continent, or between Muslims, Christians and Animists in Nigeria, have gone much deeper than those between different Christian denominations in Canada and Switzerland. The Hindu-Muslim conflict actually proved too sharp to be contained within an All-India federa-

tion as envisaged in 1935¹, but the two successor states of India and Pakistan themselves each include large religious minorities. India after partition still contained the third largest Muslim population in the world. Muslims were a majority in the state of Jammu and Kashmir, while in Madras and Kerala in the south the Muslim League has remained an active political force. Another religious group, the Sikhs concentrated in Punjab, has continually agitated for a separate Sikh state, until finally in 1966 the division of the state of Punjab was conceded in principle by the Congress leadership. There is also a small Christian population which is somewhat scattered throughout India, but which is an influential minority in the politics of Kerala. In Pakistan the partition of 1947 left ten million Hindus among the forty-two million Bengalis in East Pakistan, and these Hindus, fearing the distrust of the West Pakistanis, have been among the strongest advocates of greater provincial autonomy for East Pakistan. In Nigeria, too, religious differences reinforced linguistic ones. The acceptance of Muslim belief and law have united the Hausa, Fulani, Kanuri and Nupe ethnic groups within Northern Nigeria and have provided the basis for regional distinctiveness. At the same time, the demands of the Middle Belt tribes for their own separate state have been reinforced by their different religious views which are predominantly pagan. In the Western

¹ Government of India Act, 1935 (26 Geo. 5, ch. 2).

Region, many Yorubas are Muslim but unlike the northerners at least as many are Christian, while the inhabitants of the Eastern Region are either Christians or Animists. Within Malaysia the cultural distinctiveness of the different racial groups has been reinforced by their distinct religions: the Malays are Muslims, the Chinese are Buddhists, Confucianists, or Taoists, the Indians are Hindus or Muslims, and the various indigenous groups in the Borneo states are largely either Muslim or pagan. Similarly, in Central Africa religious differences reinforced racial ones. The settlers belonged to a variety of Christian churches, but the vast masses of the Africans were still non-Christian, many of them holding animistic beliefs and half the population of Nyasaland being adherents to Islam. In all these federations, therefore, cultural diversities have represented more than merely linguistic or racial ones but have also been sharpened by differences in religious belief and outlook.

In Switzerland, too, religious diversities have been significant, but there religious divisions have cut across linguistic ones rather than reinforcing them. There is a parallel here to English Canada, which in terms of religious beliefs is far from homogeneous, but this parallel does not extend to Quebec where, as in the newer multi-cultural federations, the distinctive cultural outlook is based not only on language but upon a single dominant religious faith. The 1950 census indicated that 58.5 per cent of the Swiss

population were Protestants and 40.3 per cent were Roman Catholics. The cantons are almost evenly divided between those with a Protestant majority ($11\frac{1}{2}$ cantons) and those with a Roman Catholic majority ($10\frac{1}{2}$ cantons).¹ Of the German-speaking cantons, eight and a half are Protestant and seven and a half are Roman Catholic. Of the French-speaking cantons three are Protestant and two are Roman Catholic, while the Italian-speaking canton of Ticino is Roman Catholic. Thus, similarities or differences of outlook based on religious belief tend often to undercut political divisions on purely linguistic lines. Nor should one underestimate the importance of these religious differences. Indeed, in Switzerland religious differences have been more significant politically than linguistic ones. An individual can learn to be bilingual, but to be bi-confessional is not possible. Moreover, many of the historical crises of Switzerland have turned on religious issues, and the political party system has reflected their significance. Although, as in Canada, there has been a lessening of religious tensions in the twentieth century, religion as a basis for political difference remains. The Catholic Conservatives for instance still maintain a strong standing in the German-speaking cantons of Uri, Schwyz, Obwalden, Nidwalden, Zug, St. Gallen, Appenzell-Inner Rhodes, Lucerne and Grisons, and in the French-speaking cantons of Fribourg and Valais.

¹ Annuaire statistique de la Suisse, 1953, p. 40.

In summary, it is clear that in the five recent multi-cultural federations of India, Pakistan, Malaysia, Nigeria and Rhodesia and Nyasaland, cultural regionalism based on linguistic, racial and religious distinctiveness assumed the proportions of sub-nationalisms. These sub-nationalisms expressed themselves in agitation for provincial autonomy and in either the growth of primarily regional political parties as in Pakistan or Nigeria, or the internal organization along linguistic or communal lines of the dominant federal political party as in India or Malaysia. Switzerland was also marked by linguistic and religious diversity, but there religious diversities have to some extent cut across linguistic ones and provided a basis whereby ideologically oriented political parties might draw together different linguistic groups.

3. Other motives for political autonomy

While it is clear that, as in Canada, cultural diversity has been politically significant in the federations under comparison, we must now consider the question whether in these federations there might be other even more fundamental motives underlying the desire for provincial autonomy. After all, the United States and Australia have found it desirable to establish and maintain federal political systems although they are not characterized by anything like the same degree of cultural diversity. It might be argued that more important than linguistic, racial or religious diversity as the source for demands for regional autonomy and for tensions

within federal systems are one or more of the following:

(1) regional economic interests; (2) variations in the size and wealth of regional groups within a society; (3) clashes between the radical and conservative political outlooks of different regional groups, (4) regional differences in degrees of modernization. Each of these is a plausible explanation of some of the tensions affecting the Canadian federal system, and, therefore, an examination of the extent to which they have been fundamental in other multi-cultural federations seems appropriate.

Although in most federations economic motives have been a prominent factor in the creation of the larger political unions, regional economic interests have also usually been among the major motives for regional autonomy or separatism, even in the ostensibly multi-cultural federations. Most of the new Asian and African federations, for instance, have attempted to unite territories with distinct economic interests. In India the concentration of industrial and commercial development in Bihar and Bengal, Bombay, and the Kaveri Valley, and the agricultural specialization of different regions have sharpened internal divisions. In Pakistan the two major areas of East and West Pakistan possessed distinct economies based on different climates and products, and one of the major complaints of the Bengalis during the first decade and a half after 1947 was the concentration of economic development in the west. The tension between the different communal groups in Malaysia has been heavily influenced by regional economic

differences. The northernmost states of the peninsula are characterized by a subsistence economy based on traditional Malay methods of rice-growing and fishing; the west coast plain is wealthier but depends upon an unstable mining and plantation economy dominated by the Chinese; Penang and Singapore derive their wealth from a mercantile economy for which customs barriers are a handicap; the Borneo states are largely agricultural. In Nigeria too, each of the ethnically distinct regions also specializes in its own different agricultural products and exports. Likewise, the three territories of Central Africa depended for their wealth on different products and derived their major governmental revenue from different sources. Even in Switzerland where the cantons were each much smaller units and, therefore, less able to think of themselves as full-fledged economic units, the growth of Zurich as the major industrial, commercial, and financial city has caused concern and there are significant differences in outlook between the urban and rural cantons.

The strength of regional economic interests is affected by a number of factors. In the first place, even where the wider common market made possible by the larger political unit brings economic gains to the federation as a whole, this does not necessarily mean a gain for each of the units. A customs union may have not only 'trade-creation' but 'trade-diversion' effects which act adversely on some territories within the federation, and these regions, unless equalization

policies are adopted, would therefore be better off outside the federation. Fears and complaints that federation has produced such effects and increased rather than reduced regional economic inequalities have been expressed not only in the Canadian Maritimes. Such issues have reinforced Bengali regionalism in Pakistan, northern separatism in Nigeria, and the secession movement in Nyasaland, just as earlier they contributed to separatist movements in Western Australia and the southern United States.

Secondly, although in most of the multi-cultural federations the products of the regional economies have been essentially complementary with the result that the regions have stood to gain from increased inter-regional trade, these regional differences in product have at the same time often fostered strong regional attitudes. In Nigeria, for example, differences in products and therefore problems of production, in types of exports, in sources of foreign capital, and in appropriate policies to promote economic development, resulted in the placing of many of the responsibilities for economic development in the hands of regional governments. It is not surprising then that Western Canadians should be separated from Quebec not only by distance and by language, but also by the different economic problems with which they are concerned.

The strength of economic regionalism has also depended upon the degree to which the economic map has corresponded to the political map. In East Pakistan, the three original

Nigerian regions, Jamaica and to a considerable extent Quebec, the economic unit has been closely related to the political one, and the pressure for relatively autonomous economic provinces has been further strengthened by their relative size which has enabled them to contemplate economic self-sufficiency. By contrast, in India, in the units within West Pakistan, amongst the west coast mainland states of Malaya and Switzerland where economic regions have coincided less precisely with internal political boundaries, or the states have been small in size, economic factors have been less influential, although not insignificant, in the demands for state autonomy.

Most of the multi-cultural federations have joined together territories with acute disparities in economic development and wealth, and these regional inequalities have invariably accentuated separatist pressures. The demand for active public development policies has invariably aggravated these regional pressures because different fiscal and monetary policies are likely to be appropriate for different stages of development and hence for different regions. The resulting pressures for regionalization of governmental development policies has not been unique to Quebec but has been particularly strong within Nigeria and the culturally homogeneous West Indies Federation.

In addition to these direct influences of economic factors upon demands for provincial autonomy, many separatist movements which have been ostensibly linguistic, racial,

or cultural in motivation have had strong economic undercurrents.¹ The separatism of the Muslim middle class in north-west India before partition was directly related to the desire to protect themselves from a larger and better educated Hindu group. The linguistic regionalism and Dravidian separatism which has dominated the Indian scene since independence has stemmed in large measure from the intensity of the struggle for jobs among the different linguistic and caste groups. In Pakistan between 1947 and 1958, the growing demands for provincial autonomy in East Bengal were generated by discontent with the economic policies of the central government which appeared to give all the spoils to the landlords and businessmen of West Pakistan.² The Bengalis were especially incensed at the degree to which the civil service and the armed forces were primarily in the hands of West Pakistanis. The repeated insistence of Northern and Western Nigeria upon full regional autonomy, and their occasional threats of secession, owed a good deal to the ethnic and religious differences already outlined, but accentuating these was the migration of

¹ See especially F. G. Carnell, 'Political Implications of Federalism in New States'; in U.K. Hicks and others, Federalism and Economic Growth in Underdeveloped Countries (London, 1961), pp. 46-7.

² See, for instance, Second Constituent Assembly of Pakistan, Debates, Vol. I, pp. 1818-9, 1845-7, 1909-10, 1942, 1998, 2016-7, 2049-50, 2072, 2083, 2100-2, 2119, 2122-3, 2232-6, 2271-2.

the aggressive Ibos to regions outside their own and the threat that they would come to dominate the economy and the civil service.¹ One Nigerian has gone so far as to describe this as the true origin of ethnic antagonism in Nigeria.² In Malaya the three racial communities have been differentiated by sharply different economic roles, and therefore communal resentments have been closely related to economic ones. The Malays have resented the dominance of commerce by the energetic Chinese and it is not surprising that it is the economically backward north-eastern states which have provided the core of Malay communalism. The Chinese, on the other hand, have resented the constitutionally guaranteed dominance of the Malays in the federal civil service. In Central Africa, too, the ostensibly racial division between the settlers and the indigenous Africans reflected sharp economic differences between the prosperity of the settlers of Southern Rhodesia and the copperbelt, and the relative poverty of Nyasaland and the African areas of Northern Rhodesia.

It would appear, then, that in many of these federations local economic interests and the desire to legitimize a number of local spoils systems have contributed strongly to the overtly linguistic, racial or cultural demands for provincial autonomy. There are signs that in Canada, too, ostensibly

¹ In 1953, southerners, mainly Ibos, held 82 per cent of all posts in the clerical service of the north. Carnell, Loc.cit.

² H.O. Davies, Nigeria: the Prospects for Democracy (London, 1961), p. 21.

linguistic and cultural tensions have been strongly coloured by economic ones. Any political solution which is to accommodate these linguistic and cultural demands will need, therefore, to take account of the closely related economic factors.

Variations in the size and wealth of regional groups have also been a factor in inter-regional tensions and demands for provincial autonomy within federations. The distrust of Ontario by Quebec suggests that this may be a significant factor in the Canadian situation. Nor is the tendency of such disparities in the size and wealth of regional groups to accentuate inter-regional tension necessarily founded on linguistic or cultural differences. One need only look at the distrust of Ontario by the other English-speaking provinces in Canada or at the West Indies Federation. The latter, although relatively homogeneous in linguistic or cultural terms, was wracked and ultimately wrecked by the inter-territorial tensions and disputes which had their root in the attempt to create a union in which Jamaica possessed 52 per cent of the population, 58 per cent of the area and 42 per cent of the revenue, Trinidad held a further 26 per cent of the population, 26 per cent of the area, and 42 per cent of the revenue, and the remaining eight territories were left sharing 22 per cent of the population, 16 per cent of the area and 16 per cent of the wealth. The result was heated controversy over the suitable degree of territorial autonomy and over appropriate territorial representation in the central political institutions because the small islands distrusted the big

islands and Jamaica in turn resented the degree to which its influence in the federation was reduced in order to accommodate the fears of the small islands.

Similar pressures have also been at work in the multi-cultural federations. Examples are the resentment by the smaller states in India of the dominance of Uttar Pradesh with its population of over 60 millions, the unification of the provinces and states of West Pakistan in order to counter-balance East Pakistan which held 55 per cent of the population, the southern fears in Nigeria of the political supremacy of Northern Nigeria (with 55 per cent of the population and 79 per cent of the area) and the northern apprehension of economic exploitation by the wealthier southerners, and the resentment in Central Africa of the Africans in the northern protectorates at the dominant position of Southern Rhodesia as a component of the federal electorate.¹ Even in Switzerland the growth of Zurich as an industrial and commercial centre has been felt to pose a threat to the balance among cantons. In each of these federations fears of domination by the larger provincial units have exacerbated differences in language and culture among the regions. In some cases this has been severe enough to produce demands that the largest units such as Uttar Pradesh or Northern Nigeria be split in order to reduce

¹Because the franchise favoured the settlers 75 per cent of the federal electorate was located in Southern Rhodesia and this electorate controlled 47 per cent of the seats in the federal legislature.

the ascendancy of one provincial unit or ethnic group within the federation.¹ It is perhaps significant that among the new multi-cultural federations, the four that have proved most unstable - Pakistan, the West Indies, Rhodesia and Nyasaland, and Nigeria - have been those in which a single provincial unit held a majority of the federal electorate. While this situation does not exist in Canada, the anxieties of the French-speaking people have certainly been accentuated by their minority position and by their impression that English-speaking Canada represents a monolithic political majority. Thus, many of the same pressures sharpening linguistic and cultural tension operate, and any solution to the Canadian problem will have to take account not only of linguistic or cultural issues, but of the political means by which the position of majority and minority groups can be reconciled with a federal system.

Another important factor in the tensions between regional groups within a society may be differences between radical and conservative outlooks towards politics. This consideration is certainly relevant to a study of the Canadian situation for until the mid-twentieth century Quebec with its emphasis on its traditions was considered to be more conservative in its political viewpoint than most of the rest of

¹ See, for instance, Report of the States Reorganization Commission, 1955 (New Delhi, 1955), pp. 244-252, and Cmnd. 505/1958, Nigeria, Report of the Commission appointed to enquire into the fears of minorities and the means of allaying them (London, 1958), Part IV.

Canada. Moreover, since 1960, under the impact of the 'quiet revolution', Quebec has now become politically far more radical than the rest of conservative Canada, and it might be argued that it is this which lies at the root of current tensions.

An examination of the ostensibly multi-cultural new federations suggests that in many of them inter-regional tension which is overtly cultural has been closely related to differences of political outlook or ideology. Perhaps Malaysia and Nigeria present the most obvious examples. The reluctance of the Alliance Party to admit Singapore to Malaysia in 1963, and the subsequent expulsion of Singapore in 1965 were as much related to this as to racial factors. It is true that the Malay-dominated Alliance feared the effect of the added Chinese population upon the Malaysian racial balance, but at least as strong a force for discord was the clash between the inherent conservatism of the Alliance, including the commercial Chinese elements which supported it, and Lee Kuan Yew's extreme socialist People's Action Party which governed Singapore. Never at any time was a sense of political trust between these parties developed, and it was the P.A.P.'s decision to campaign actively in federal politics, not as a Chinese party but as a Malaysian socialist party, which provoked the expulsion of Singapore. Similar tensions were a powerful force also in Nigeria and Pakistan. In Nigeria the southerners looked upon northern conservatism as a source of frustration and were fearful of what they considered to

be the 'feudal' outlook of the leaders who dominated the ruling Northern People's Congress. In East Pakistan before 1958 the Bengalis generally more radical in their politics resented the dominance of West Pakistani landlords and businessmen in central politics, while the latter groups were fearful that federal elections would result in a shift leftwards in the politics of the country. It is significant that in Switzerland the main divisions between political parties are not linguistic but ideological or economic, the major parties being the Catholic Conservatives, the Radicals and the Socialists.¹

Nor can one assume that the more radical the political outlook the more likely it is to favour centralization. It is true that in many cases, and notably in India and Nigeria socialists have been the strongest advocates of centralization, basing their arguments on the view that the development of the economy can be controlled effectively only if the fiscal and monetary instruments of control are concentrated in the central government. But this view has not been universal among socialists. The West Indian socialists, for example, especially the Jamaicans, preferred to achieve welfare states on their own insular scale and were hostile to central economic powers of any kind, despite the fact that culturally the federation was relatively homogeneous. Moreover, experience has suggested

¹ For an analysis of Swiss political parties see G. A. Codding, The Federal Government of Switzerland (Cambridge, Mass., 1961), chapter 8.

that in practice a centralized uniform development policy is not always the most efficient way for encouraging development in a diversified economy, and that there are some benefits to be gained from planning on a regional basis.

There is evidence to suggest then that the clash between radicalism (or socialism) and conservatism can, when these viewpoints are concentrated regionally, become on their own a source for inter-regional tension as in the West Indies, or as in Malaysia, Nigeria, Pakistan or Switzerland affect significantly relations between linguistic and cultural groups.

Another factor which may lie at the base of inter-regional tension within a federal system is the contrast between regions in degree of modernization. On the Canadian scene one of the features of the changing scene in Quebec has been the determination of its new elite to make up for the lag in modernization which the emphasis upon tradition had caused in that province until the mid-twentieth century, and to accelerate the process of modernization.

In the newer multi-cultural federations regional differences in degree of modernization have greatly accentuated regionalism. In these federations, modernization and the penetration of western ideas during the period of colonial rule were often very uneven. Regions where Britain had relied on indirect rule, such as the princely states of India and Pakistan, the former Unfederated Malay States, Northern Nigeria, and the protectorates of Central Africa, have usually lagged behind the others. These regions, fearful of being dominated

by the more modernized areas, have usually been strong proponents of regional autonomy. The predominantly Muslim regions, influenced by Muslim conservatism and educational backwardness, have nearly always been apprehensive of union with more modernized territories. The north-west provinces of pre-partition India and Northern Nigeria illustrate this tendency. Differences on the scale of modernity have also reinforced racial differences in Malaysia and Central Africa, and linguistic differences within India and Pakistan. In such cases of uneven modernization, provincial autonomy has often been advocated as a way in which the less developed provinces, protected from exploitation or domination by the more developed provinces, might have a breathing space in which to accelerate their own development and so improve their position relative to the other provinces.

As noted in section 2 of this chapter, language and culture usually provide a particularly powerful focus for regional separatism. But it is clear from the analysis in this section that linguistic and cultural tensions are often closely connected to economic interests, variations in the size and wealth of different regional groups, clashes between radicalism and conservatism, and contrasts in degree of modernization. Indeed sometimes these issues may be even more fundamental than linguistic or cultural ones but masquerade as cultural issues in order to achieve added emotive effect. Because differences of language among groups are so easily identifiable and therefore provide a simple focus, the appeal

to linguistic and cultural issues gives any movement for regional separatism an especially potent force. The significance of this analysis of experience in other multi-lingual or multi-cultural federations is that it suggests that the role of linguistic and cultural differences within the Canadian federal system cannot be understood in isolation from the other closely related factors considered in this chapter.

4. The forces for unity

So far in this chapter the analysis has been concentrated upon the motivating pressures for regional autonomy. No assessment of federal societies would be complete, however, if it neglected the forces which bring or hold together multi-lingual and multi-cultural societies within federal political systems. Unless there are motives for union sufficiently strong at least to balance those for regional separatism no federation is likely to maintain its existence for long.

An examination of the factors which have led to the establishment or continued existence of other multi-cultural federations within the Commonwealth indicates that a variety of motives have contributed to their political unity. Among these have been the desire to achieve or sustain genuine political independence, the hope of economic benefits from membership in the larger interdependent economic unit, the expectation of increased administrative efficiency flowing from economies of scale, the need for effective military defence, the vision of greater international prestige and diplomatic influence, the existence of geographical contiguity

and linking communications, the presence of a sense of inter-regional community derived from historical association, some cultural ties, or some similarity of political and social institutions, the activity of dynamic but conciliatory leadership, and in the colonial federations the role of the imperial government in constitution-making.¹ It is also clear that the relative importance of these different factors has varied with each federation, some factors being more influential in one federation and some in another, although most of these factors have been present to some degree in each federation. What is especially significant is that where these pressures for unity have failed to balance persistent pressures for regionalism as in Pakistan, Central Africa, Nigeria or even the culturally homogeneous West Indies, either disintegration or the resort to military rule in order to preserve the union have resulted. Ultimately, the preservation of any federal political system would seem to rest not simply on the reconciliation of distinctive regional outlooks but upon providing a common consensus to which the different linguistic and cultural groups are willing to commit themselves. Without such a positive focus any attempt merely to reconcile differences is likely only to delay but not prevent political disintegration.

What complicates the picture is that the motives for union and separatism within a society rarely remain constant, particularly in societies undergoing rapid political and

¹ For a detailed analysis of these factors see R.L. Watts, New Federations: experiments in the Commonwealth (Oxford, 1966), pp. 41-66.

economic development. As a result the equilibrium between the motives for union and separatism is never static but constantly undergoing change. The success of a federal political system is to be found in its ability to develop a dynamic equilibrium which adapts to the changing social demands made upon it.

Chapter 4

THE PROVINCIAL UNITS

1. The significance of the character of provincial units

A federal political system presupposes the existence of provincial governments as components of the federation. The analysis of the way in which federal institutions may accommodate the pressures for political diversity may begin appropriately, therefore, with a consideration of how the character of these provincial units affects the ability of the federal system to accommodate regional interests. In Canada after nearly one hundred years of confederation we tend to take the present structure of provinces for granted. But in the creation and development of the newer multi-cultural federations controversies over the appropriate shape of provincial units have focused attention upon the ways in which the operation of federal systems may be affected by the character of their regional units. Since many of the existing territorial units were simply the arbitrary or accidental products of British colonial administration and bore little relation to linguistic, cultural or economic groupings within these societies, the possibility of redrawing provincial boundaries to coincide with cultural or other interests has been considered in most of the newer federations. In the process such questions as the effects of the number, relative size, and internal cultural homogeneity of provinces have been much discussed.

The significance of these issues in the newer multi-cultural federations can be seen from the way in which nearly all of them have found it appropriate during their brief history to improve the operation of their federal systems and especially to meet the demands of local cultural and economic groups by reshaping their internal boundaries. In India the states were completely reorganized on a linguistic basis in 1956 with further adjustments being made when bilingual Bombay state was divided into two unilingual states in 1960, the creation of a separate Naga State was undertaken in 1962, and the decision to split Punjab was made in 1966. In West Pakistan, the three Governors' provinces, one Chief Commissioner's province, ten princely states, some frontier tribal areas, and the federal capital area, which in 1947 had existed separately as regional units, were consolidated in 1955 into a single province counterbalancing the single Bengali province of East Pakistan. In Malaya and Malaysia there has been little in the way of shifting state boundaries, but the exclusion of Singapore as a state in 1948 and again in 1965, and the invitation to the Borneo states to join the Malaysian federation in 1963, were related to preserving and adjusting the racial balance among the component states. Southern Nigerians blamed many of Nigeria's tensions on the overwhelming size of the north and argued that it should be split, while minorities in each of the regions sought their own separate autonomous states. Up until 1966 Northern Nigeria had successfully

resisted any attempt to break it up, but itself played a leading part in splitting the Western Region so that a new Mid-Western Region might be created in 1963. During the lifetime of the Central African federation no actual changes were made to its three territorial units, but on several occasions there were suggestions that Northern Rhodesia should be redefined so that the copperbelt and the line of rail along which the settlers were concentrated might be amalgamated with Southern Rhodesia, while the remaining predominantly African areas of Northern Rhodesia might be linked with Nyasaland.

2. The size and number of provinces

Among the new multi-cultural federations there have been striking contrasts in the area and population of their component regional units. Three of the federations have consisted of states or provinces of massive size. Eight of the fourteen Indian states after the reorganization of 1956, each province of Pakistan after the consolidation of West Pakistan in 1955, and Northern Nigeria have each contained populations greater than the total federal population of Canada, Australia or Switzerland. At the other end of the scale, more than half of the Malaysian states, eight out of ten of the West Indian territories, and all but two of the twenty-two Swiss cantons had individually a population of less than half that of either Montreal or Toronto. Experience in these multi-cultural federations suggests that the larger regional units have been better able to sustain effectively full governmental machinery, to minimize costly duplication of admin-

istration, to function themselves as economic units for purpose of economic planning, and to discourage the provincial governments from usurping the functions of local government. Most of these advantages would appear to apply in Canada, at the very least to Ontario and Quebec. Especially relevant is the size of the latter province in the light of its desire to take a greater part in shaping its own economic development. But critics of the larger regional units in the newer multi-cultural federations have also pointed to their shortcomings and to the administrative and political advantages of smaller provincial units. To begin with, the larger regional units are likely to be less homogeneous internally and many of the advocates of smaller provinces have aimed at regional units which might reduce the existence of linguistic or cultural minorities within a province.¹ Secondly, the examples of the larger regional units of Nigeria, Pakistan, India and also the West Indies, asserting themselves at the expense of the central government, and the willingness of the Malayan states, the smaller Caribbean islands, and the Swiss cantons to accept increasing central power, suggests that larger regional units are more likely to obstruct the effective exercise of central power or to contemplate a separate self-sufficient existence.

¹For a further discussion on the internal homogeneity of provinces, see section 3 of this chapter.

As we have already noted in the previous chapter, the size of regions relative to each other within a federation has often been a factor accentuating inter-regional tension.¹ The relative population of provinces has been important because it generally governs central voting strength. This issue, for instance, has been an explosive one in Nigeria, Pakistan and also the culturally homogeneous West Indies.² The relative wealth of provinces is also significant because of its effect upon the ability to finance services comparable to those of other regions without a greater dependence on central aid. Thus where linguistic and cultural differences among provinces are accentuated by disparity in wealth and consequently social services, invariably some sort of financial adjustment and equalization has been necessary to minimize inter-regional tension.³

The number of component provinces within a federation is a factor which also affects the character of politics within the system. The notable feature of the newer federations by contrast especially with the 50 states of the United States or the 22 cantons of Switzerland is the tendency for fewer regional units. India, for example, with a population double that of the United States, has less than a third of the number

¹ See chapter 3, section 3.

² The ways in which central institutions have been organized in an attempt to resolve this issue are discussed in chapter 6.

³ The methods by which this has been done in other federations are discussed in chapter 5.

of autonomous states. Nigeria and Pakistan, despite their immense populations (each more than double that of Canada) have four and two regional units respectively. The political effect in these federations has been two-fold. First, the position of the regional governments has in practice been much strengthened at the expense of central authority, and the pressures for regional separatism have been accelerated. Secondly, a struggle of regions for federal supremacy has been encouraged. The inter-regional fears of domination in Nigeria and the determination of each of the two provinces in Pakistan not to be subordinate to the other have seriously undermined federal stability. This suggests that although Quebec may chafe at being only one among ten provinces, a stable solution to the political problems of Canadian bilingualism is not likely to be found simply in the creation of a biprovincial federal system.

In some of the newer federations, the solution advocated for adjusting the number of regional units, for reducing wide disparities in the size and wealth of provinces, or for reconciling differences in the size of linguistic or cultural groups spread across several provinces, has taken the form of a zonal structure in which a middle tier of government, grouping provinces into roughly equal zones, would be introduced between the tiers of central and provincial government. Somewhat similar schemes have been advocated on occasion in Canada for the grouping together of Maritime provinces, or of the western provinces. Such a scheme is to some extent

implicit also in the notion that the Canadian federal system should become a dual one in which all the English-speaking provinces would be grouped together in one zone to which French-speaking Quebec would have equal status. Such arrangements were suggested for pre-partition India by the Cabinet Mission of 1946, in the original proposals for West Indian federation in 1945-6, and in some of the proposals for Uganda's inclusion within an East African federation. In each of these cases, the notion of another tier of zonal government was rejected, however, because of the complexity involved. The experience of Pakistan is especially instructive. Prior to 1955 there were a number of proposals for grouping the linguistically varied provinces and states of West Pakistan together under a zonal government in order to counter-balance the Bengali majority concentrated in East Pakistan. In the end it was decided that such an arrangement would be too complicated, and instead the various units of West Pakistan were simply amalgamated into a single multi-lingual province. Only in India has a zonal system been adopted. In 1956 at the time of the reorganization of state boundaries the states were grouped into five large zones, but the zonal councils are consultative inter-governmental bodies rather than a middle tier of government.¹

A simpler scheme than that of a zonal structure within a federation is the concept of double federation. Such an

¹ The States Reorganization Act, 1956 (37/1956), part iii. For a comment on the operation of these councils see chapter 6.

arrangement was envisaged by the Government of India Act, 1935, was proposed for the West Indies by Jamaica in 1960, and was adopted in Malaysia in 1963. In these schemes one group of provinces belonged to a relatively centralized federation, while other large, wealthy, or culturally distinctive units such as Jamaica or Singapore, or states differing in constitutional status such as the Indian princely states of 1935 or the Malaysian Borneo territories were less closely tied to the central government and retained autonomy over a greater range of functions. This type of arrangement has sometimes been advocated as a compromise in Canada between the relative willingness of English-speaking provinces to accept greater centralization and the insistence of Quebec upon greater autonomy,¹ and the extended use of the 'opting out' formula appears to point in this direction. Since such an arrangement is closely related to the way in which authority is distributed between levels of government, the experience in other multi-cultural federations where such schemes have been considered or adopted will be discussed more fully in chapter 5.

3. The homogeneity of provincial units

The degree to which a federal political system may effectively meet the needs and interests of different linguistic and cultural groups is affected by the extent to

¹ See, for instance, D.V. Smiley, 'The Two Themes of Canadian Federalism', The Canadian Journal of Economics and Political Science, Vol. XXXI, no. 1, February 1965, pp. 80-97.

which the provincial units themselves represent homogeneous groupings.

Although all federations have contained sectional groups - linguistic, economic or other - which were geographically localized, it has been rare for the concentration of these groups to coincide precisely with the provincial political units. To begin with, diversities are usually not regionally segregated so exactly that political boundaries could mark off completely homogeneous units. People do not arrange themselves like that. Just as in Canada not all French Canadians live in Quebec nor is Quebec totally French Canadian, so in other multi-cultural federations the regional units are never completely homogeneous and a single unit rarely marks off all the members of a linguistic or cultural group. This is clearly apparent from an examination of the tables in Appendix 2. Even in India, Nigeria or Switzerland where the regional units appear to be so distinctive linguistically, there are inevitable overlaps at the edges of the regional boundaries and there are cultural minorities in every regional unit. Indeed, in both India and Nigeria commissions examining possible revisions to internal political boundaries which might create homogeneous units concluded that it would be impossible to draw boundaries which did not leave at least some minorities within each regional unit.¹

¹ Report of the States Reorganization Commission, 1955 (New Delhi, 1955), paras. 154, 233; Cmnd. 505/1958, Nigeria, Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them (London, 1958), p. 87.

Thus, the extent to which social diversities are localized within provinces is a matter of degree. In such federations as Canada, India, Pakistan, Nigeria and Switzerland each linguistic and cultural group has been concentrated to a relatively high degree, while in Malaya and Central Africa the racial divisions have been less precisely localized, although there are significant regional variations in the concentration of the racial communities.

A second reason for the internal social heterogeneity of regional units in federations is that the geographical scope of linguistic, racial, religious, cultural, historical, economic and other interests may not coincide precisely with each other. For instance, the regional grouping of economic interests may not coincide with the distribution of cultural groups, or, as we have already noted in chapter 3, religious groupings may cut across linguistic ones as they do in Switzerland. Thus, regional differences usually operate over several different geographical spans. The situation where some diversities correspond fairly closely with the actual regional political units, while others correspond to groups of provinces and still others represent divisions within provinces, is, therefore, not unique to Canada but typical of all federations. For instance, India may be looked at from several regional viewpoints. There is the fundamental division between the Indo-Aryan Ganges heart-land in the north and the Dravidian peoples of the Deccan and coastal plains to the south; there are the five main

economic regions represented by the Zones into which the states have been grouped; there are the states themselves representing since 1956 the major linguistic regions; there are within the states important regional differences of caste, religion, economic interests, and, in a few cases still, language. Similarly, within Pakistan there are not only the differences of language, tradition, culture and economy between the provinces of East and West Pakistan, but also within Pakistan the distinctions of physical feature, language, social structure and custom which marked off the various political units which existed prior to the unification of West Pakistan in 1955. Malaysia too can only be understood in terms of several levels of regional differentiation. The racial and economic contrasts between the peninsula, Singapore and the Borneo states explain the special status which was given to Singapore, Sabah, and Sarawak within the Malaysian federation. But on the peninsula itself there are historical, racial and economic contrasts between the predominantly Malay states in the north and the internally heterogeneous states on the west coast. Furthermore, each state itself has a distinctive historical identity, while within the states themselves the Malays live in their kampongs, the Chinese are concentrated primarily in the mines and the cities, and the Indians are located on the plantations. Regionalism in Nigeria is equally complex. There is the basic distrust between north and south derived from differences of religion, social institutions, degree of modernization,

and relative size of population. Within the south there is the bitter Yoruba-Ibo rivalry expressed in tensions between the Western and Eastern Regions, while within each of the regions themselves there are minority groups who have been strong enough to agitate for their own separate political regions.

This analysis suggests a number of points which may be of significance to the understanding of Canadian problems. First, in all federations the regional distribution of interests has been complex, and therefore, simply to assume that the provincial units are representative of all regional interests oversimplifies the picture in a misleading way. What is needed is an understanding of the way in which these different types and spans of regional interests interact with each other.

At the same time, however, it is worth emphasizing that since the provincial units are the most effective political means of expressing regionalism, a federal system is likely to be more successful if its provincial units reflect the most fundamental regional interests within that society. Otherwise there may be demands for the reorganization of provincial boundaries as have occurred in India, Pakistan and Nigeria. Experience in India and Nigeria would seem to suggest that the creation of essentially unilingual states has tended to reinforce regional loyalties by giving them linguistic solidarity, but this has been outweighed by the reduction in tensions over language issues. Thus, on

balance federal stability and unity have been enhanced. Both in India and Nigeria resistance, as long as it lasted, to the reorganization of regional units on linguistic lines provoked expressions of minority grievances, the competition of political parties to exploit minority grievances, vigorous and sometimes unconstitutional agitation, and bitterness and national instability over the conflicting claims and counter-claims.

The structure of federal institutions which is appropriate also may be related to the degree to which provincial units are homogeneous and to the extent to which the territorial concentrations of cultural, economic and other regional interests coincide geographically with each other. These factors will certainly affect the strength of the pressures for provincial autonomy, and consequently the functions suitably performed by the different levels of government, the areas on which inter-governmental co-operation is necessary, and the character and role of political parties in representing different regional interests.

Finally, since in all federations some minorities within the regional units have been unavoidable, constitutional provisions specifically designed to protect and meet the needs of these intra-regional minorities have usually been found desirable.

4. Arrangements for protecting intra-provincial minorities

Because intra-provincial minorities have nearly always been unavoidable in multi-cultural federations, a variety of arrangements for protecting these minorities has been found necessary.¹

To begin with, a list of justiciable fundamental rights for all citizens has usually been specified by the constitution.² Since the motive for setting forth these fundamental rights was as much to protect minorities within provinces as to protect provincial majorities against federal majorities, the constitutions in the newer multi-cultural federations have made these fundamental rights binding upon provincial as well as federal governments. Among the fundamental rights specified have been not only personal liberty, freedom of assembly and association, and equality before the law, but also the general guarantee of certain religious, educational

¹ For details of relevant constitutional provisions see Appendix 6 which contains selected articles and sections from different federal constitutions.

² Constitution of India, 1950, arts. 12-35; Constitution of the Islamic Republic of Pakistan, 1956, arts. 3-22; Constitution of the Federation of Malaysia, 1963, arts. 5-13; Constitution of the Federal Republic of Nigeria, 1963, sections 18-33. The fundamental rights in the Constitution of the Republic of Pakistan, 1962, arts. 5 and 6, were not justiciable, but an amendment conceding to the courts some power to review legislation was passed in 1963. Although not grouped separately as fundamental rights the Federal Constitution of the Swiss Confederation, 1874, arts. 4, 43, 45, 55, 56, 58, 60, correspond.

and cultural rights.¹ In most cases there was a recognition, too, that the grievances of linguistic, religious or cultural minorities are usually tied closely to economic discrimination, for the constitutions specifically prohibit discrimination against cultural minorities in employment for the public services.² The Minorities Commission in Nigeria came to the conclusion that, so long as constitutional government was maintained, the general fundamental rights listed in the constitution would probably provide sufficient protection for intra-regional minorities,³ but in most of the other multi-cultural federations further safeguards have been created.

¹ Constitution of India, 1950, arts. 12, 15, 16, 25-30, 350; Constitution of the Islamic Republic of Pakistan, 1956, arts. 13, 14, 18, 19, 21; Constitution of the Republic of Pakistan, 1962, art. 6, principles 7, 12, 14, art. 8, principles 3, 4, 5, 6, 10, 14, 16; Constitution of the Federation of Malaysia, 1963, arts. 4(1), 11, 12; Constitution of the Federal Republic of Nigeria, 1963, ss. 5(1), 24, 28. For similar provisions see Federal Constitution of the Swiss Confederation, 1874, arts. 27, 27 bis, 49, 50.

² Constitution of India, 1950, art. 16; Constitution of the Islamic Republic of Pakistan, 1956, arts. 12, 17; Constitution of the Republic of Pakistan, 1962, art. 8, principles 6, 14; Constitution of the Federation of Malaysia, 1963, art. 8; Constitution of the Federal Republic of Nigeria, 1963, s. 28.

³ Cmnd. 505/1958, Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them, pp. 97-103.

In India and Malaysia, the constitutions have included, in addition to a list of general fundamental rights, special guarantees to specified linguistic or other groups which are in a minority in some states. These provisions correspond to some extent to sections 93 and 133 of the British North America Act, 1867, but they are far more extensive in scope.

In India there are special guarantees for linguistic minorities, for the Anglo-Indians, and for the Scheduled Castes and Tribes. The articles relating to the intra-state linguistic minorities deal with the use of minority languages for official purposes, for the redress of grievances, and for education. For instance, the Union government is empowered, if it is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognized by that state, to direct that such a language be officially recognized throughout the whole or any part of the state.¹ Every person is entitled under the Constitution to submit a representation for the redress of any grievance to any officer or authority of the central or a state government in any of the languages used in the Union or in that respective state.² Furthermore, as amended in 1956, the Constitution requires that every state and local

¹Constitution of India, 1950, art. 347.

²Article 350.

authority within a state must provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to minority groups.¹ Moreover, the Union government is empowered to issue directions to any state it considers necessary or proper for securing the provision of such facilities, and a special officer for linguistic minorities, appointed by the central government, is provided for.² It is his duty to investigate all matters pertaining to the safeguards for linguistic minorities under the Constitution and to report to the Union government. His reports are laid before Parliament and the governments of the states concerned. The Indian Constitution also provides some guarantees for a specified period to the Anglo-Indians who were given special consideration with regard to appointments in certain public services and special education grants.³ In addition, there are provisions to protect certain backward classes, the 'Scheduled Castes' and the 'Scheduled Tribes'.⁴ Special consideration for

¹ Art. 350A as inserted by the Constitution (Seventh Amendment) Act, 1956, section 21.

² Art. 350B as inserted by the Constitution (Seventh Amendment) Act, 1956, s. 21.

³ Arts. 336, 337.

⁴ For a somewhat similar Swiss provision see the Federal Constitution of the Swiss Confederation, 1874, art. 31 bis.

employment in the public services is guaranteed to members of the scheduled castes and scheduled tribes.¹ There is no time limit for this preferential treatment, but it appears to be assumed that it will continue until these groups make sufficient educational and economic progress to reach equality with the rest of Indian society. A special officer for the scheduled castes and tribes is also appointed by the Union government to report on the operation of the safeguards protecting the representation of the scheduled castes in state legislatures, their claims to representation in the public services, and their fundamental rights.² This special officer is now assisted by ten assistant regional commissioners, and he reports annually to the Union government. The Constitution also provided for the appointment of two commissions by the central government, one to investigate and report on the administration of scheduled areas and the welfare of scheduled tribes, and the other to investigate the conditions of socially and economically backward classes and to make recommendations as to the steps that should be taken by the Union or any state to remove their difficulties.³ The Backward Classes Commission

¹ Constitution of India, 1950, art. 335.

² Art. 338.

³ Art. 340

reported in 1955 but the Union government found it difficult to accept its recommendations because the Commission had not found objective tests and criteria for classifying socially and educationally backward classes. The Union government went ahead itself, however, to make surveys for determining criteria for the purpose, and the report provided by the Registrar General of India now supplies the basis for determining which groups require governmental help for their progress.

The Malayan and Malaysian Constitutions have also included special guarantees for certain specified groups within the states. The Malayan Constitution of 1957 contained explicit arrangements on behalf of the Malays for the reservation of land, for quotas for permits, and for quotas for employment in the public services within the states.¹ These guarantees were designed to protect the Malays who, because of their relative educational and economic backwardness, might otherwise have suffered in competition with the other racial groups, even in those states where they formed the majority. These provisions were continued in the Malaysian Federation, and were also extended to 'natives' in the Borneo states of the wider federation.² At the same

¹ Constitution of the Federation of Malaya, 1957, arts. 89, 90, 153(10).

² Malaysia Act, 1963, s. 62 inserting art. 161A in the Constitution of the Federation of Malaysia, 1963.

time additional safeguards for the variety of indigenous peoples in these Borneo states were provided, these centring on the continued use of native languages and the protection of the Muslim religion and education.¹

The existence of minorities within provinces has also often affected the organization of provincial government. In a number of cases special provision has been made for representation in provincial legislatures. In India places have been reserved in the state legislatures for members of the scheduled castes and tribes and for Anglo-Indians.² In Pakistan places have been reserved for women members.³ When Nigeria first established a federal system, arrangements were made for the representation of 'special interests or communities' in the regional legislatures, an arrangement which was continued after independence in only Northern Nigeria.⁴ In the two northern territories of the Central African federation there was provision for special African

¹ Constitution of the Federation of Malaysia, 1963, arts. 161, 161C, 161D.

² Constitution of India, 1950, arts. 332-4.

³ Constitution of the Islamic Republic of Pakistan, 1956, art. 77(2); Constitution of the Republic of Pakistan, 1962, art. 71(2).

⁴ The Nigeria (Constitution) Order in Council, 1954 (S.I. 1954, no. 1146), ss. 22, 30, 36; Constitution of Northern Nigeria, 1960, s. 7(b).

representatives.¹ When the provinces of West Pakistan were united into a single culturally heterogeneous province, the fears among smaller groups of domination by Punjabis led to the constitutional requirement that Punjab, although containing a majority of the population within the united province, be limited to no more than two-fifths of the membership in the provincial assembly.² In most federations provision has also been made for the use in state legislatures of minority languages, or, where in the interests of minorities, of English. When the states of India were reorganized on linguistic lines in 1956 special arrangements were made for some of those states which remained fundamentally bilingual or multi-lingual. Regional committees were established within the state legislatures of Andhra and Punjab and separate regional development boards were created within the state of Bombay.³ Somewhat similar arrangements were made in Western Nigeria on behalf of the ethnic minorities in the Mid-Western area. A special Ministry of Mid-West

¹ Cmnd. 1149/1960, Advisory Committee on the Review of the Constitution of the Federation of Rhodesia and Nyasaland, Report: Appendix VI, Survey of Development since 1953 (London, 1960), pp. 39-40, 43-4, 52-3.

² The Establishment of West Pakistan Act, 1955, s. 14; Constitution, 1956, art. 77(5); Constitution, 1962, art. 239.

³ Constitution of India, art. 371 as inserted by the Constitution (Seventh Amendment) Act, 1957, s. 22.

Affairs and an advisory Mid-West Council were established in Western Nigeria in 1957.¹ The Northern and Eastern Regions of Nigeria were themselves internally subdivided into provinces for administrative purposes also to allay the fears of minorities.² In most federations, as already mentioned, there have been constitutional provisions designed to ensure opportunities for minorities within regional services, but only in the two northern territories of the Central African federation was it considered desirable to specify the representation of minorities or special groups on provincial executive councils.³ Elsewhere this was left to convention. The separation of intra-provincial minorities or special groups into separate electorates has also been avoided except in Central Africa and Pakistan.⁴

It is significant that not infrequently in multi-cultural federations the central government has been assigned by the constitution a special responsibility as the guardian of minorities against oppression by provincial governments.

¹ Cmnd. 505/1958, Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them, pp. 12, 96.

² Cmnd. 569/1958, Report of the Resumed Nigeria Constitutional Conference (London, 1958), paras. 54-5.

³ Cmnd. 1149/1960, Op.cit., pp. 43, 54.

⁴ Ibid., pp. 33-6, 43-6, 53-4; Constitution of the Islamic Republic of Pakistan, 1956, art. 145. There are no separate electorates under the Pakistan Constitution of 1962.

For example, in the cases of the scheduled areas, tribes and castes in both India and Pakistan and the aborigines in Malaya the central government was given direct responsibility, or powers to give directions to state governments regarding these minorities.¹ In India, as we have noted, the Union government has also been given power to direct state governments concerning the recognition within states of minority languages, the use within states of minority languages for education, and the establishment within states of regional legislative committees and development boards, and provision has been made for a special officer reporting to the central government on the operation of minority safeguards within the states.² In Pakistan the authority to specify whether there were to be joint or separate electorates for provincial election was left under the 1956 Constitution to the National Assembly to decide after consulting the provincial legislatures.³ The Malayan Constitution specified that changes in the reservation of land for Malays required not only a special majority in the state assembly but approval by special majorities in the central parliament.⁴

¹ Constitution of India, 1950, arts. 244, 275(1), 337-42, Fifth and Sixth Schedules; Constitution of the Islamic Republic of Pakistan, 1956, arts. 103-4, 204-7; Constitution of the Republic of Pakistan, 1962, art. 223; Constitution of the Federation of Malaya, 1957, Ninth Schedule, List 1, item 16.

² Constitution, arts. 347, 350A, 350B, 371.

³ Constitution of the Islamic Republic of Pakistan, 1956, art. 145.

⁴ Constitution of the Federation of Malaya, 1957, arts. 89-90.

In Central Africa, it was the United Kingdom government rather than the central government which was assigned the function of protector of territorial political minorities against discrimination by territorial governments.¹ In many of these federations provincial majorities have been reluctant to see their autonomy reduced in these various ways, but the intra-provincial minorities have pressed for these checks upon provincial autonomy because of their fear that otherwise the guarantees to them might remain ineffective.

In some multi-cultural federations, inter-governmental advisory bodies, usually with representation from both the central and the provincial governments concerned, have been established to promote the interests of certain intra-provincial or inter-provincial minorities. This, for instance, was one of the functions envisaged for the Indian Zonal Councils and the Southern Zonal Council has had some notable success in handling the mainly educational problems of linguistic minorities where these have overlapped state boundaries.² The Councils for Minority Areas in Western

¹Cmnd. 1149/1960, Op.cit., pp. 30-1, 47-8, 54-5. The Africans were a majority of the population in each of these territories, but a minority of the electorate.

²J.V. Bondurant, Regionalism versus Provincialism: a study in problems of Indian National Unity (Berkeley, 1958), pp. 56, 62; W.H. Morris-Jones, The Government and Politics of India (London, 1964), pp. 103, 144.

and Eastern Nigeria and the Niger Development Board were primarily intended to promote the interests of intra-regional minorities.¹ The anxieties of Nigerian minorities over the potential misuse by regional majorities of their control of the police led to a unique arrangement under which a single federal police force with regional contingents was normally administered by a Police Council composed of central and regional ministers.²

It would appear, then, that in most multi-cultural federations a variety of special devices have been considered necessary to protect intra-provincial minorities and that many of these safeguards have required an inter-penetration of the functions of provincial and central governments.

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¹Cmnd. 505/1958, Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them, pp. 94-7; Cmnd. 569/1958, Report of the Resumed Nigeria Constitutional Conference, paras. 52, 56.

²Constitution of the Federal Republic of Nigeria, 1963, ss. 105-10.

Chapter 5

THE DISTRIBUTION OF AUTHORITY AMONG GOVERNMENTS

1. The distribution of legislative and executive authority

A definitive characteristic of a federal political system is the distribution of authority within the system between co-ordinate central and provincial governments. Many interesting questions arise out of this aspect of federal government and much of the scholarly writing on federalism has tended to concentrate upon it. In this study, however, no attempt will be made to examine every facet of the assignment of functions to the different levels of government, but rather attention will be focused on only those which are related to the multi-cultural character of a federation. At the same time, it must be noted that, in view of the points made in chapter three, where it was noted that culturally sensitive issues may be closely related to issues of economics, relative modernization and fears of political domination, no consideration of the cultural significance of the distribution of authority between levels of government would be of value if it were carried out in isolation from these related issues.

It has often been suggested that the chief merit of a federal political system in a multi-cultural society is that it makes possible a compromise whereby all matters of military and economic interest can be concentrated in the hands of the central government while those matters of linguistic and cultural significance can be left to the provincial governments

to be managed as each regional cultural group prefers. Indeed, Professor Smiley has suggested that this was the essential character of the Canadian confederation settlement of 1867.¹ According to this view the settlement of 1867 was a compromise which aimed at making possible the aggressive economic development of the British North American economy by entrusting to the Dominion government the authority necessary for military defence and economic development, but which at the same time aimed at avoiding political tensions by leaving to the provinces jurisdiction over those classes of subjects in which legislation would have a direct incidence on cultural matters. Whether or not this was the basis of the 1867 settlement, it is evident from recent political developments in Quebec that underlying the present dissatisfaction in that province is the recognition that the growing inter-regional character of the Canadian economy threatens to undermine the French Canadian cultural distinctiveness of that province. The insistence of French-speaking Quebec upon its own extensive economic and financial powers grows out of this realization and represents a challenge to the notion that powers over the economy should be concentrated in the central government. What light, then, if any, does the experience of other multi-cultural federations shed on this fundamental issue?

¹ Donald V. Smiley, "The Two Themes of Canadian Federalism", Canadian Journal of Economics and Political Science, Vol. XXXI, no. 1, February 1965, pp. 80-97, esp. pp. 81-3.

Although some of the statesmen in other multi-cultural federations have thought along the lines attributed by Professor Smiley to the founders of the Canadian confederation, in most of these other federations the founding statesmen have found themselves forced into the realization that a simple compromise between economic centralization and cultural provincialization is no longer a realistic possibility in the conditions of the twentieth century.

Two major pressures have shaped the distribution of authority among governments in the newer multi-cultural federations. First, there has been in each of these federations a deep-rooted anxiety among regional linguistic or cultural groups that national fiscal and economic policies aiming at the rapid development of an integrated economy would undermine the cultural distinctiveness of the diverse regional groups. Reinforcing this concern has been the desire to ensure that the economy would develop in such a way that members of the regional linguistic or cultural groups would have opportunities for employment in culturally congenial conditions. In its cruder form this feeling has expressed itself in the desire of each regional linguistic or cultural group for its own local spoils system.¹

These culturally coloured motives for provincial responsibility in the field of economic policy have usually been reinforced by more directly economic considerations. It is

¹ See chapter 3, section 3 above.

true that in the newer federations the emphasis upon the need for rapid economic growth guided by active governmental development policies and controls has provided a strong incentive for placing economic powers where, according to the prevailing belief, they would be most effective: under central direction. But there have been economic counter-pressures too. Particularly influential have been the conflicts of economic interest between provinces specializing in different products, between provinces dependent on exports and those dependent on home products, between wealthy and relatively dependent provinces, and between provinces which would benefit from different fiscal and tariff policies.¹ Moreover, there has in recent years been a growing realization that centralized economic planning may be less efficient than was assumed in the first flush of Keynesian enthusiasm, and that there is a need for regional development policies which are more responsive to local economic conditions. A problem which has further complicated the assignment of governmental authority over economic affairs has been the recognition that although certain aspects are clearly of federation-wide significance and others are of chiefly special regional interest, these aspects are closely interconnected in such a way that they cannot be isolated from each other. For example, it has in practice proved virtually

¹ For a more extensive discussion of examples see R. L. Watts, New Federations: experiments in the Commonwealth (Oxford, 1966), chapter 3, section 3.

impossible to draw a simple line between trade and commerce which is inter-state and that which is solely of intra-state significance.

The result of these circumstances has been the rejection in the newer federations of the notion that functions can be divided into two water-tight compartments, the one dealing with military and economic matters to be allocated to the central government, and the other dealing with purely cultural or local economic matters to be allocated to the provincial governments. The unavoidable interdependence of central and provincial governments has been reflected in the way in which responsibility over many areas, and particularly over economic affairs, has been shared between levels of government rather than being assigned exclusively to one or the other. Appendix 3 which provides in tabular form a comparative analysis of the distribution of authority in a number of federations indicates that although primary responsibility over economic matters has usually been given to the central government,¹ at the same time, as an expression of both cultural and economic pluralism, important economic functions have also usually been allotted to the provincial governments. The precise balance in the distribution of authority among governments has varied, of course, in different federations to meet the particular needs of each society. India, Pakistan, and Malaysia have put the most emphasis upon making possible a leading role for the central

¹The West Indies Federation was an exception to this trend.

government in economic planning and in formulating fiscal and monetary policies. The Nigerian and Central African federations placed less but still substantial economic powers in central hands. The West Indies Federation, culturally far more homogeneous than any of these federations chose, however, to place planning and economic development primarily on an island basis. But despite this range of variation, the significant feature which all these federations had in common was that in none of them was the control of economic policy concentrated solely in one level of government. In most of the multi-cultural federations the central governments have been assigned relatively broad exclusive or concurrent authority over trade, commerce, industry, labour, communications, sources of energy, science, industrial research and statistics. At the same time, provincial governments have usually been given not only control over most aspects of such culturally sensitive areas as civil and personal law and education but also exclusive or concurrent authority over such matters as agriculture, land, local industries, intra-provincial trade and commerce, utilities, and often labour, all of them areas which are of particular significance in developing economies. Moreover, in most cases the provision of social services has been left largely in provincial hands.¹ The potential advantages of centralized social services - economies of scale, uniformity

¹Malaya is the exception, but in the Borneo states of Malaysia a number of the social services are placed under concurrent rather than exclusive central jurisdiction.

of standards, and the fiscal ability of central governments to support costly services - have been outweighed by the compelling arguments for making the provinces responsible for these services: the personal nature of these services, the need to adapt them to local circumstances and problems, and their close relation to other aspects of local administration. Thus, generally, at least primary and secondary education, medicine and health, and most aspects of social security and social welfare services have been made provincial responsibilities. In most of these federations the net effect of the distribution of legislative and executive authority has been to place in the hands of the central governments the major levers for promoting economic development, but to place at the same time such extensive economic powers in the hands of the provincial governments that the central governments have had to rely heavily upon the provincial governments for the full implementation of development programmes. Consequently, in practice the role of the central government has often become primarily that of co-ordinating provincial action.

The relatively extensive roles which the provincial governments have come to play in most other multi-cultural federations is illustrated in Appendix 4, Table 9. If provincial expenditure is taken as a percentage of the combined central and provincial public expenditure we find that only in Malaya among the newer federations has the expenditure of the regional units of government as a proportion of total

public expenditure been smaller than that of the Canadian provinces. It might be possible to attribute the relatively higher concentration of central public expenditure in Canada to the needs of a more advanced complex economy, but a comparison with the equally advanced federation of Australia suggests that this is not the only explanation. It is significant that only since 1961 has the proportional expenditure of the Canadian provinces exceeded that of the states in the culturally homogeneous federation of Australia. Indeed, the present situation in Canada which, compared to other multi-cultural federations, still represents a relatively high degree of centralization, reflects nearly a decade of financial devolution. Provincial expenditure as a percentage of total federal and provincial expenditure in Canada was a mere 29 per cent in 1956-7, 35 per cent in 1959-60, 37 per cent in 1960-1 (the same as Australia in that year), and 41 per cent in 1962-3.¹

Because of the difficulty of dividing economic functions into neatly separate and independent compartments, most of the newer federations have had to devise a variety of arrangements designed to facilitate consultation and co-operation

¹ In these calculations the total cost of joint programmes, including the portion financed by federal grants-in-aid, has been attributed to provinces. In most other federations expenditures on such programmes are accounted for in this manner. It is perhaps illustrative of the more centralist Canadian outlook, that the official Canadian accounts usually include this portion with federal rather than provincial expenditures. The percentages above are calculated from statistics in Historical Review: Financial Statistics of Governments in Canada, 1952-62, Dominion Bureau of Statistics Catalogue No. 68-503 (Ottawa, 1960).

between central and provincial governments. Often these have taken the form of a procedure, sometimes specified in the constitution itself and sometimes established pragmatically as political pressures made such conventions necessary, requiring one level of government to consult or even obtain the consent of the other level of government before action is taken. The Malaysian Constitution contains the most provisions of this kind, although virtually all the newer federal constitutions have included some areas where inter-governmental consultation or consent was required. For example, this sort of solution has been applied as a way of enabling central governments to implement treaties and agreements on subjects normally within provincial competence. Thus, the 1956 Constitution of Pakistan and the 1957 Constitution of Malaya required the consultation of the regional governments affected in such cases, while the constitutions of Rhodesia and Nyasaland and of Nigeria went still further, requiring the consent of regional governments in so far as the implementation of treaties and international agreements affected normally regional subjects.¹ There are many other examples in the newer federations of required consultation or consent among governments, and the Constitution of the Federation of Rhodesia and

¹ Constitution of the Islamic Republic of Pakistan, 1956, art. 108 proviso; Constitution of the Federation of Malaya, 1957, art. 76(2) and Malaysia Act, 1963, Sixth Schedule; Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 34; Constitution of the Federal Republic of Nigeria, 1963, s. 74.

Nyasaland even included a general stipulation that "the Governments of the Federation and of the Territories shall, in so far as is practicable, consult together on all matters which are of common interest and concern."¹ In those cases where the consent of the other level of government is required before a government acts the interests of the other governments involved are safeguarded, but there is the danger that, if the governments find agreement difficult, there may be serious delays and inflexibility, as has sometimes been the case in Malaya.² The requirement of consultation but not necessarily consent is a less rigid arrangement. It ensures that the interests of other governments will at least be taken into account, without at the same time running the risk that action will be prevented. On the other hand, this arrangement does not provide as strong a protection for the other governments involved. Most federations, therefore, have found it convenient to use both procedures. Consultation is required in some areas and consent in certain others which are more vital to the interests of the provincial governments.

¹ Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 42(2).

² See, for instance, Col. no. 330/1957, Report of the Federation of Malaya Constitutional Commission, 1957 (Reid), (London, 1957), para. 33.

There have been other ways, too, in which the sharing of governmental control over certain functions has been arranged. By contrast with Canada, in nearly all the newer federal constitutions there are lengthy lists of concurrent powers, touching on a wide range of subjects.¹ This has provided a means by which central governments could in these matters exert a general and ultimate control while leaving provincial governments to fill in the details. Usually there have also been extensive provisions enabling the delegation of legislative or executive authority by either level of government to the other.²

A characteristic feature of the newer multi-cultural federations, therefore, has been an interlocking responsibility of both governments over a wide range of functions including many economic matters. In this situation extensive co-operative interaction between governments has been an unavoidable necessity. The machinery devised to facilitate this inter-governmental co-operation is analysed further in chapter 6 below.

¹ For examples see Appendix 3.

² Constitution of India, 1950, arts. 252, 254(2), 258, and 258A as inserted by the Constitution (Seventh Amendment) Act, 1956, s. 18; Constitution of the Republic of Pakistan, 1962, arts. 131(3), 135(b), 143; Constitution of the Federation of Malaya, 1957, arts. 76, 80, 110(4), 157, and Malaysia Act, 1963, ss. 30(7), 37, 38, 48; Constitution of the Federal Republic of Nigeria, 1963, ss. 72, 99, 100; Constitution of the Federation of Rhodesia and Nyasaland, 1953, arts. 31, 32, 41, 42(3).

2. The allocation of financial resources

Questions of federal finance may at first sight seem far removed from those of bilingualism and biculturalism within a federal system, but they are in fact a crucial element in the picture. This is illustrated by the extent to which the demands of the Quebec government for reform within the Canadian federal system have focused upon the issue of fiscal arrangements. There are three reasons for the importance of this issue. First of all, legislative or executive autonomy for the provinces is likely to prove illusory if the provincial governments are dependent upon the discretion of the central government for financial assistance. Thus a centralized financial system may threaten to undermine the provincial political and cultural distinctiveness which the federal structure was intended to protect.

A second reason is that the control of revenue and expenditure is now widely assumed to be a vital instrument for the active public control of the economy by fiscal and monetary policy. The locus of power over the economy is therefore closely related to the allocation of taxing and other financial powers. Thus, federal finance is no longer simply a question of whether the revenues assigned to each level of government are adequate to their legislative and executive functions, but has taken on added significance as a major factor in the control and guidance of the economy. If the management of the economy within a multi-cultural federation is to be organized in such a way as to be efficient economically and yet at the same time enable the expression of

regional cultural distinctiveness, then the relative roles of the central and provincial governments in the control of revenue and expenditure lie close to the heart of the problem.

A third reason is that often, one of the factors accentuating tensions between different linguistic or cultural groups within a federation has been the existence of differentials in the range and quality of publicly provided amenities available in different provinces. The result has often been pressures for a redistribution of financial resources within a federation in order to ensure that no linguistic or cultural majority in a province will feel that its services are of a significantly lower standard than those of other groups in the federation.

In dealing with these financial questions the newer multi-cultural federations have mainly followed the Australian rather than the Canadian model. This pattern has been based upon treating the question in terms of three variable components: (1) the allocation of expenditure, (2) the assignment of powers to levy and collect revenue, (3) the use of substantial transfers of revenue from one level of government to the other.

In the allocation of fields of expenditure, both political and economic considerations have led to a relatively high degree of decentralization, as already noted in the first section of this chapter. This reflects the strength of political and cultural regional interests in these federations. This decentralization has been reinforced further

by economic arguments that in the social services, agriculture, and even in development projects, efficiency and adaptation to varied local circumstances can often be best achieved through local administration. Consequently, as Table 9 in Appendix 4 shows, provincial expenditure as a proportion of combined federal-provincial expenditure has been relatively high in the newer multi-cultural federations as compared to Canada.

In the assignment of powers to levy and collect taxes and other revenues, however, the newer federations have tended to stress the role of the central government. As Table 9 in Appendix 4 shows, only in India among the multi-cultural federations is central revenue (before inter-governmental transfers) a smaller proportion of combined central-provincial revenues than in Canada.¹ The major revenue sources, direct and indirect, have been assigned to the central government.² Important considerations have been efficient levying and collection, minimizing double taxation, avoiding barriers to inter-provincial trade, strengthening the credit-worthiness of the federation, and enabling an integrated active fiscal policy both to encourage domestic and foreign investment and to maintain stability against inflationary pressures. Most of

¹The West Indies Federation was a marked exception to the general trend in the newer federations.

²See Appendix 3 for the actual assignment of taxing powers in the different federations.

the major indirect taxes, such as import and export taxes, excise duties, and sales taxes, have been placed normally under central control, although some exceptions with regard to specific products have been made where special circumstances favoured provincial responsibility. The levy and collection of corporation and personal income taxes have also usually been assigned to the central government, although in Nigeria the latter was placed in regional hands because its collection was closely related to local administration. Thus, in the newer multi-cultural federations most of the taxing instruments for implementing economic policy have been placed in the hands of the central government. The provincial governments have had to rely on taxes with a distinctly local base, such as those on land, duties on entertainment, and licences, and upon non-tax sources of revenue such as profits from commercial operations and public utilities. Furthermore, the power of provincial governments to raise loans has usually been restricted. Because the control of credit is an essential element in limiting inflation and maintaining employment, and because of the necessity to protect the credit-worthiness of the federation as a whole, the authority to raise foreign loans has nearly always been placed exclusively in central hands or has at least required central approval.

The net effect of these contrasting trends - decentralization of expenditure and centralization of revenue - has been the need to resort to very substantial inter-governmental

financial transfers in order to bring into balance the revenues and the expensive functions of the provincial governments. This contrasts with the trend in Canada in recent years to devolve the taxing powers themselves upon the provinces. The relative size of inter-governmental transfers and their pattern in different federations is presented in Table 10 in Appendix 4.

Several features are noteworthy about the arrangements for fiscal adjustment in the newer multi-cultural federations. The first is that in order to save the principle of provincial financial autonomy, the major portion of the transfers from the central to the provincial governments has normally taken the form of constitutionally guaranteed unconditional grants or constitutionally guaranteed shares of central tax receipts. The principle of 'fiscal responsibility' - that governments who have the pleasant job of spending money should have the unpleasant job of raising it - has been given little weight on the grounds that taxes are significant these days not merely as sources of revenue but even more as an aspect of fiscal policies with wider economic implications. The dominant factor in the widespread use of unconditional transfers has been the strength of the political and cultural pressures insisting upon provincial autonomy. Extensive reliance upon conditional grants to augment provincial current revenues has almost always been rejected because it would undermine provincial autonomy and give the central government

a measure of control over the provincial governments.¹ Thus, in none of the newer multi-cultural federations do conditional grants-in-aid form anything like as large a proportion of current provincial revenues as in Canada.

These unconditional transfers in the newer federations have taken one of two forms. Often they have simply been unconditional grants. This form has the advantage that the fixed amounts give the provincial governments a basis upon which to plan for the future and to exercise responsibility in keeping expenditure within income. Although in some cases, notably Malaysia, formulae for the escalation of such grants have been used, in most cases the unconditional grants suffer the disadvantage that they are likely to require regular adjustment. More popular in the new federations has been the constitutional guarantee to the provinces of a specified percentage of the proceeds from certain taxes levied and collected by the central government. This may, as in Nigeria, even involve grouping together a number of central taxes to form a distributable pool from which certain proportions are distributed to the regional governments. The advantage of this form of unconditional transfer is that provincial revenue is elastic, expanding correspondingly with central revenue

¹ An exception has been the relatively wide use of conditional grants in India and Pakistan for purposes of capital projects as part of the Five Year Plans.

since the provinces are guaranteed a percentage of central tax proceeds. At the same time provincial governments are given a direct interest in encouraging the growth of the activities on which these taxes depend for their yield.

The fiscal transfers in the newer multi-cultural federations have been used not only to match the provincial revenues to the provincial responsibilities for expenditure, but also to reduce disparities in the capacity of the less fortunate provinces to provide services and social amenities. Although the principle of derivation - the distribution of transfers among provinces in direct proportion to the provincial contribution to central taxes - has been applied in some cases because of the pressure of wealthier regions, especially in Nigeria before 1958, generally its use has been limited. In most of the multi-cultural federations an attempt has been made in the allocation of financial transfers to compensate for the unequal impact of the federation on certain provinces, to minimize differences in the per capita revenue of provinces, and to meet the special needs of less wealthy provinces. Because accurate data on provincial fiscal capacity has usually been difficult to obtain, the most common formula for the distribution of unconditional transfers to provinces has been on a per capita basis, this being adjusted sometimes to take specific account of other special factors.

The attempt to diminish economic differentials between provinces has often affected not only the financial transfers

from central to provincial governments but also general economic policy. Regional cultural groups have sometimes demanded not only an equalization of the services available in different provinces but also the location of development expenditure with the conscious aim of producing equality of provincial per capita wealth. Often such pressures have been resisted because economists insisted that it would result in less productive employment of limited capital resources, but in practice concessions have usually had to be made to such political pressures. In Pakistan, for example, Bengali resentment at the concentration of capital investment in West Pakistan, where it would be more productive, became sufficiently serious that President Ayub's government has had to direct an increasing proportion of Pakistan's capital investment into East Pakistan. Indeed, it became necessary to include a provision in the new 1962 constitution expressly stipulating:

A primary object of the (National Economic) Council in formulating the Plans...shall be to ensure that disparities between the Provinces and between different areas within a Province, in relation to income per capita are removed and that the resources of Pakistan (including resources in foreign exchange) are used and allocated in such a manner as to achieve that object in the shortest possible time.....¹

In fact this policy has become a cardinal point of economic planning in Pakistan in recent years, and it is by no means

¹Constitution of the Republic of Pakistan, 1962, art. 145(4).

insignificant that during this period there has been some decline in the strength of East Pakistani separatism.

Since the allocation of financial resources in the newer multi-cultural federation has been based on unconditional transfers of substantial proportions, institutions have had to be created to make these arrangements adaptable to changing needs and circumstances. In nearly all of these federations standing machinery for review and adjustment have been established, as a rule modelled on the Australian precedents of the Grants Commission and the Loan Council. The nature of these institutions made necessary by the financial interdependence of central and provincial governments will be analysed in chapter 6 below.

3. Variations within a Federation in the distribution of functions

Some Canadians have suggested that the only distribution of powers and privileges between the two levels of government that will satisfy the current demands of centralist English-speaking Canadians and decentralist French-speaking Canadians is one which will provide for a different sharing of these powers and privileges between Quebec and Ottawa than that which prevails between the federal administration and the other provinces.¹ Such an arrangement would not be unique for in some of the other multi-cultural

¹ See, for instance, Donald V. Smiley, "The Two Themes of Canadian Federalism", Canadian Journal of Economics and Political Science, Vol. XXXI, no. 1, February 1965, pp. 93-7.

federations the general scheme for the distribution of legislative and executive authority between central and provincial governments has not been applied uniformly to all provinces.

In a number of instances where certain regional groups have been particularly jealous of their autonomy, the scope of their provincial autonomy has been made more extensive than under the general pattern for the distribution of functions. One of the first examples was the scheme in the Government of India Act, 1935, whereby the acceding princely states would have transferred responsibility to the central legislature only for those subjects specifically mentioned in their Instruments of Accession.¹ This portion of the federal structure envisaged in the 1935 Act never had an opportunity to go into effect, but a similar arrangement did govern the acceding princely states under the interim constitutions of India and Pakistan in 1947. The arrangement did not last for long, however. Such variations in the distribution of authority were attacked in the Indian Constituent Assembly on the grounds that: "So long as the disparity exists, the Centre's authority over All-India matters may lose its efficacy. For power is no power if it cannot be exercised in all cases and in all places."²

¹ Government of India Act, 1935, ss. 6(2), 101.

² Constituent Assembly of India, Debates, Vol. VII, p.42.

Under pressure, the rulers of the princely states signed progressively wider instruments of accession, until under the Indian Constitution, 1950, the central and concurrent authority applied virtually uniformly to all states except the state of Jammu and Kashmir.¹ A few minor transitional differences continued to distinguish the former princely states, but these differences were removed in 1956.² The state of Jammu and Kashmir, however, retained a special status because of the controversy over its accession. It was hoped that by giving the state greater autonomy its inhabitants might be more easily reconciled to membership in the Union. The list of exclusive central powers specified in the Constitution applied to Jammu and Kashmir, but for this state, unlike the other states, central authority did not extend to matters on the concurrent list and the residual authority remained with the state rather than the central government.³ But Indian nationalists were never reconciled

¹ White Paper on Indian States (rev. ed. 1950), paras. 175, 218-21, 244.

² Constitution (Seventh Amendment) Act, 1956, s. 29 and Schedule amending arts. 259, 278, 291 and 306 of the constitution.

³ See Constitution (Application to Jammu and Kashmir) Order, 1954, especially ss. 2(6)(b), 2(22)(b), made under article 370 of the Constitution of India, 1950. See also B. R. Sharma, "The Special Position of Jammu and Kashmir State in the Indian Constitution", Indian Journal of Political Science, Vol. XIX, no. 3, July-September 1958, pp. 282-90; M. P. Jain, Indian Constitutional Law (1962), pp. 597-600.

to this as a permanent arrangement, and late in 1964 the special status of the state of Jammu and Kashmir was reduced although not ended, provoking considerable resentment within the state. In India there have been three other examples of states with special status. When Nagaland, which had been torn by a terrorist secession movement, was finally made a full-fledged state, the application of certain central laws in that state was made dependent upon approval by the state legislature.¹ A somewhat different arrangement was that which concerned the small sub-Himalayan dependencies of Sikkim and Bhutan, which were protectorates on a treaty basis and therefore remained formally outside the framework of the federation. This last sort of arrangement would appear to be inapplicable to Quebec, however, since its relation to the rest of Canada is not so peripheral.

Pakistan, shortly after independence, consisted of several categories of regional units: four Governor's provinces, one Chief Commissioner's province, a Federal territory, a number of separate acceded states, one union of acceded states, and some frontier tribal areas. But as in India, the general trend was towards the reduction of variations in the scope of central and regional powers. The unification of the various types of units in West Pakistan into a single province in 1955 virtually achieved this

¹Constitution (Thirteenth Amendment) Act, 1962.

although the specified Tribal Areas and Azad Kashmir¹ continued to remain under greater central direction.

In independent Nigeria the autonomy of the regions was uniform, but in Rhodesia and Nyasaland there were some variations among the territorial units. The desire of the settlers, especially in Southern Rhodesia, for centralization, and African apprehensions, especially in the two northern territories, of central control led to an unusual feature in the distribution of powers in that federation: the division of certain subjects on racial lines. Education and agriculture, which in most other federations were provincial subjects, were divided so that European education and, except in Nyasaland, European agriculture were central responsibilities, while African education and agriculture were territorial matters.² Because the most of the settlers were concentrated in Southern Rhodesia this meant that the major portion of the federal government's attention was devoted to that territory. Moreover, since the standard of services provided by the central government for Europeans was higher than that provided by the territorial governments

¹Azad Kashmir is the portion of Kashmir held by Pakistan.

²Constitution of the Federation of Rhodesia and Nyasaland, 1953, Federal List, items 24, 25, 26, 30. See also Northern Rhodesia, The Non-African Agriculture (Transfer to the Concurrent List) Ordinance, 1955 (N.R. Ordinance 61/1955).

for Africans, the Africans were given the impression that federation was for the benefit primarily of Southern Rhodesia and especially its settlers. This arrangement so discredited the federal union among Africans in the northern territories that the Monckton Commission concluded in 1960 that the federation could only survive if African support was won by "a less racial approach to the division of powers".¹

From the examples already examined it would appear that where the distribution of authority between levels of government within a federation has not been uniform it has often fostered rather than reduced tension. On the one hand, nationalists, wishing to avoid the complexities of varied jurisdiction and fearing that the central government would be hampered in the exercise of its own normal powers, have pressed for more uniformity as in India and Pakistan. On the other hand, those regional groups which have possessed greater autonomy, as in Kashmir or the northern territories of Rhodesia and Nyasaland, have to some extent felt themselves alienated from the central government which had more extensive responsibilities in other regional units. The dangers of such a scheme were recognized during the West Indian review of the federal constitution. When the Jamaican Government advocated a special confederal arrange-

¹Cmnd. 1148/1960, Report of the Advisory Commission on the Review of the Constitution of Rhodesia and Nyasaland (London, 1960), para. 35.

ment for itself, giving it greater legislative autonomy than the other islands, the constitutional conference of 1961 decided against such a scheme, preferring instead to increase the general level of territorial autonomy.

But the most significant example of this problem has been Malaysia. When the entry of Singapore and the Borneo states into the widened Federation of Malaysia was being negotiated, special exceptions were conceded in the application of the existing Malayan legislative lists to these states.¹ Because of Singapore's special labour and education problems it was agreed that Singapore should retain control over these and a number of other matters which in the Malayan states still fell under central legislative authority. In the Borneo states, certain central subjects, mainly those concerned with native laws and customs, local commerce and communications, and shipping and fisheries, were placed under exclusive state or concurrent authority, while others, such as immigration and development planning, remained central responsibilities but required the approval of the Borneo states before they applied there. In addition, as a transitional arrangement some other central functions were delegated to the Borneo states in order not to disrupt existing administrative arrangements. Thus, one of the

¹ Malaysia Act, 1963, Fourth Schedule. See Appendix 3. See also Cmnd. 1954/1963, Malaysia, Report of the Inter-governmental Committee, 1962 (London, 1963), paras. 16, 17, 21-23, and Annex A.

most significant features of the Malaysian Federation has been the marked variance in the relation of different states to the central government. The states of the previous Federation of Malaya continued as before, but the new acceding states enjoyed considerably more legislative, executive, and financial autonomy, and their special interests were more fully safeguarded under the constitution. This arrangement has not, however, been a total success. It is true that so far it has worked reasonably well in the two Borneo states of Sabah and Sarawak. The fact that they are separated from the other states by some 500 miles of sea has made it less difficult to treat them differently from other states in economic matters. In the case of Singapore, however, the greater autonomy of that state did not satisfactorily resolve the problem. On the one hand, because Singapore's economy was closely related to that of the peninsula, it proved impossible to isolate it from central policies. On the other hand, because of Singapore's greater autonomy it was considered appropriate to reduce its proportionate representation in the central legislature and to restrict the federal franchise of Singapore citizens outside Singapore.¹ The result was a sense of alienation from the central

¹ Singapore with 17 per cent of the federal population was given only 15 seats in the House of Representatives with 159 members. On the federal franchise restrictions upon Singapore citizens outside Singapore see Malaysia Act, 1963, s. 31. It is perhaps significant that neither of these disabilities applied to Sabah or Sarawak.

government in Singapore, and this feeling was reinforced by the refusal of the federal Alliance Party to admit the People's Action Party, ruling in Singapore, to a partnership in the governing of the federation. The consequent resentment in Singapore, and the annoyance of the Alliance Party at the P.A.P. for not confining its political activities to Singapore expressed itself in mounting tension which culminated in the complete separation of Singapore only two years after it had joined the federation.

What are the lessons here for Canada? The first point is that a federation in which certain provinces are given a much greater degree of autonomy than the other provinces is possible. Those who would argue that it is inconsistent with the principle of federalism are clearly wrong, for examples can be alluded to. Moreover, as experience in the newer multi-cultural federations has made abundantly clear, the most effective federal systems, such as India, have been those in which the constitutional balance has reflected fairly accurately the balance of political forces within the society. Where, as in Pakistan during the first decade and Central Africa, a centralized federal structure has failed to give regional interests adequate expression, or, as in the West Indies, the federation has been too decentralized to provide any significant benefits from the union, the federations have experienced serious difficulties or disintegrated. It is extremely important, therefore,

that the distribution of functions among governments within a federal system should express effectively the different demands of the regional groups within the system.

At the same time, the actual experience of multi-cultural federations within which there have been marked variations in the degree of provincial autonomy, suggests that in practice few such examples have worked happily. It is certainly clear from Malaysian experience that unless the arrangement is devised in such a manner as to give the more autonomous provinces a feeling that they are not merely second-class members of the federation, the scheme is likely to lead ultimately to secession as in Singapore or the northern territories of Rhodesia and Nyasaland. If, in order to reflect sharply varying degrees of political regionalism in different provinces variations within a federation in the distribution of authority between levels of government are unavoidable, such an arrangement is likely to remain stable only if the machinery for inter-governmental co-operation and the institutions of central government are carefully designed to ensure that the more autonomous groups still feel themselves to have an integral part in the operation of the federal system.

Chapter 6

INTER-GOVERNMENTAL INSTITUTIONS

1. Interdependence within federal systems

It is already clear from the analysis in the preceding chapters that the newer multi-cultural federations have been characterized by an interpenetration of the activities of their central and provincial governments. The notion of a strictly dual polity of two tiers of government operating independently of each other has in practice proved both impossible and undesirable. This being the case, the newer multi-cultural federations have found it useful to establish a variety of commissions and councils specifically designed to facilitate inter-governmental consultation and co-operation. In Canada there has been some resistance to such a trend for fear that it might encroach upon the sovereignty of Parliament and the provincial legislatures, but in the newer federations the importance of inter-governmental co-operation in making a federal system effective has been recognized as even more important. Some of these inter-governmental institutions have actually been specified in the constitutions, but many of them have been established simply by agreement as the need arose. Broadly speaking, these institutions may be divided into five categories according to the type of inter-governmental relations they deal with: those concerned with financial relations, those concerned with economic policy,

those concerned with other specific areas of common concern, those concerned with national cohesion, and those concerned with constitutional disputes. Because, as we have already noted in earlier chapters, provincial cultural distinctiveness is related to financial, economic and other issues, each of these categories of inter-governmental institutions will be examined.

2. Inter-governmental financial institutions

Most of the newer multi-cultural federations have found it convenient to establish commissions or councils to review and adjust at periodic intervals the distribution of financial resources, and to co-ordinate public borrowing. In this respect these federations have been heavily influenced by the examples of the Australian Grants Commission and the Australian Loan Council.

In nearly every one of the newer federations some sort of review of the allocation of tax revenues and grants has been provided for. Most often these questions have been turned over to an independent expert advisory commission, whose function is to consider the evidence impartially and to arrive at an agreed recommendation. This has been the pattern in India where the Constitution provides for the appointment every five years of a Finance Commission whose task is to make recommendations concerning the distribution of the tax revenues shared by the Union and the states, the principles determining grants-in-aid, and any other matters

referred to it in the interests of sound finance.¹ The Constitution of Rhodesia and Nyasaland provided for a similar review at five-year intervals by an independent commission.² In Malaysia quinquennial reviews for central financial relations with the Borneo states and biennial reviews for Singapore were specified. The reference to an independent assessor was to be made, however, only if the governments involved were unable to reach agreement, but in such a case the assessor's judgment was to be binding.³ Advisory fiscal review commissions similar to those in India and Rhodesia and Nyasaland were appointed in Pakistan in 1952 and in Nigeria in 1947, 1950, 1953, 1957 and 1964, but these were ad hoc commissions rather than on a quinquennial basis.⁴ Because adjustments to the distribution of financial resources may affect critically the balance of power between central and provincial governments, the success of these commissions has depended upon their ability to establish a reputation for impartiality. The ability of these commissions to win the

¹ Constitution of India, 1950, arts. 280-1. To date Finance Commissions have reported in 1952, 1957 and 1962.

² Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 96. The first commission reported in 1957.

³ Malaysia Act, 1963, ss. 47, 48.

⁴ The Nigerian constitutions of 1960 (art. 153) and 1963 (art. 164) provided for such commissions "from time to time".

confidence of regional politicians was particularly important in India and Pakistan because there the appointment of the commissions and the implementation of their recommendations rested solely with the central governments. Confidence in the independence of the fiscal review commissions was essential also in Nigeria and Rhodesia and Nyasaland, however, for although regional interests were safeguarded by the requirement of regional consent to any modification in the constitutional provisions regarding financial transfers, unless the recommendations of the fiscal commissions received support from both levels of government adjustments would be impossible. To date, it would appear that the tradition of impartiality and independence has been established by the fiscal review commissions in all these federations, for in practice their recommendations have almost always been accepted with little or no change.

In Pakistan since 1956 and in Malaya the function of fiscal review was assigned to inter-governmental councils composed of ministers representing the central and provincial governments.¹ In these instances decisions have been arrived at more by bargaining than by impartial examination. In both countries the provincial representatives carried considerable weight for together they outnumbered those of the central

¹Constitution of the Islamic Republic of Pakistan, 1956, art. 118; Constitution of the Republic of Pakistan, 1962, art. 144; Constitution of the Federation of Malaya, 1957, art. 108.

government. The governments retain the final power of decision since both the Malayan National Finance Council and the National Finance Commission of Pakistan are only advisory in their authority.¹

Because the control of credit is an important element in the curbing of inflation and the maintenance of employment, because irresponsible borrowing by one province may affect detrimentally the credit-worthiness of other provinces and of the central government, and because a single or co-ordinated programme of public borrowing is likely to obtain more favourable terms on the international market, the new federations have established institutions to facilitate the co-ordination of public borrowing. In Pakistan and Malaya where inter-governmental councils composed of central and provincial ministers already existed for reviewing the tax and grant structure, these same councils were used to co-ordinate the exercise by governments of their borrowing powers. Rhodesia and Nyasaland and Nigeria, where independent advisory commissions were used to carry out fiscal reviews, followed instead the Australian example of establishing a separate Loans Council, composed of one representative from

¹Under the 1956 constitution of Pakistan the decisions of the National Finance Commission were binding, but up to the time of the suspension of that constitution in 1958 the commission had not been convened.

each government, to co-ordinate central and regional public borrowing.¹ The Central African Loan Council, like its Australian precedent, actually controlled central and territorial borrowing, but this was limited to foreign loans. The Nigerian Loans Advisory Board was only advisory, however, but extended its recommendations to internal as well as external loans. In India, states were not permitted to raise external loans and therefore no co-ordinating body was considered necessary, but some questions concerning Union loans to the states were referred to the second Finance Commission.

In some federations provision has been made for special institutions to settle central-provincial financial disputes which are not appropriate for supreme court jurisdiction. For example all three Asian federations and Rhodesia and Nyasaland have provided for special tribunals for adjudicating disputes between governments over costs incurred by delegated administration.² Similar tribunals were also allowed for in order to settle disputes between governments over 'unreasonable' central restrictions on external borrowing by provinces in

¹Constitution of the Federation of Rhodesia and Nyasaland, 1953, arts. 88-92; Cmnd. 481/1958, Nigeria, Report of the Fiscal Commissioner (London, 1958), paras. 158, 166.

²Constitution of India, 1950, arts. 257(4), 258(3); Constitution of the Islamic Republic of Pakistan, 1956, art. 129; Constitution of the Federation of Malaya, 1957, art. 80(6); Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 31(3).

Pakistan (1956-8), over payments for land in Malaya, and over the use and control of inter-state rivers and river valleys in India.¹

3. Inter-governmental institutions for co-ordinating economic policy

Among the most important of the inter-governmental institutions established in the newer federations have been those concerned with planning and co-ordinating economic and social development. These have been especially important because of the way in which the relative economic development of different regions may affect cultural sensitivities and because of the way in which responsibility for economic affairs has usually been distributed between both levels of government.

Examples of major inter-governmental councils concerned with co-ordinating economic policies and development planning have been the National Development Council in India, the National Economic Council in Pakistan, the National Finance Council and the National Land Council in Malaya and Malaysia, the National Economic Council in Nigeria, and the Inter-Territorial Planning Group in Rhodesia and Nyasaland.

In India and Pakistan the central government has played a strong role in the process of economic planning both because of provincial dependence upon central grants and loans for

¹ Constitution of the Islamic Republic of Pakistan, 1956, arts. 116(4), 129; Constitution of the Federation of Malaya, 1957, art. 87; Constitution of India, 1950, art. 262.

capital projects and because a planning commission or board of the central government has collated the plans of the various provinces, drafted the national plans, and advised on their implementation. Nevertheless, in both countries the supreme body responsible for laying down the guidelines for the economic plans and for supervising their implementation has been a council composed of central and provincial premiers or cabinet ministers: the National Development Council in India and the National Economic Council in Pakistan. In addition to co-ordination of policy by these councils, development planning has involved virtually continuous consultation between various central and provincial departments in the implementation of plans. The significance of the resulting interaction between governments is summarized in Morris-Jones' assessment of Indian economic planning:

The upshot as regards plan formulation seems to be a convincing form of co-operative federalism - so long as we understand that phrase to include hard competitive bargaining. This is indeed the character of Indian federalism throughout. Whereas the emphasis in the Constitution is on demarcation, that of practical relations is on co-operative bargaining.¹

In Malaya, too, the central government has played a major role in economic and social planning because there, more than in any of the other multi-cultural federations, legislative and executive authority over economic matters

¹W. H. Morris-Jones, The Government and Politics of India (London, 1964), p. 143

was concentrated in the central government. Nevertheless, the central government in Malaya and now Malaysia has been required to consult the National Finance Council, composed of central and state representatives, before putting development plans into operation.¹ There has also been a separate Land Council, composed of central and state ministers, to formulate a national policy for land utilization which would be binding on central and state governments, and to advise on national development plans.² In addition, a Rural and Industrial Development Authority, also composed of central and state representatives has been created to stimulate and organize economic and social development projects, especially in rural areas.

In Nigeria the National Economic Council, composed of representatives of all governments within the federation was formed in 1955 as a forum for the discussion of economic matters and for fostering co-operation between governments. Its effectiveness was enhanced by the addition of a Joint Economic Planning Committee in 1959, and an agreed single federal-regional six year development programme was published in 1962. A number of other inter-governmental bodies concerned with related matters have also been established,

¹Constitution of the Federation of Malaya, 1957, arts.
92(1), 108.

²Arts. 91, 92(1).

notably the National Council of Natural Resources and the Niger Development Board.

The officials' conference of 1951 preceding the formation of the Central African federation had recommended a development commission of central and territorial representatives, with a central planning staff, but these proposals were never implemented. An inter-Territorial Development Planning Group was appointed, however, to consider the 1957-61 development plans of all the governments and did play a role in co-ordinating the presentation of these plans. Otherwise, the machinery for inter-governmental consultation on economic planning was less adequate than in the other newer federations.

These examples indicate that in the newer multi-cultural federations both levels of government have participated in the formulation of basic economic policy. Because provincial cultural interests are affected by economic policy and because federal and local economic questions cannot be isolated from each other, it has been necessary to give provinces a role in the process of economic planning. The advantage of these inter-governmental councils has been that they enable central and provincial governments to work together in developing positive policies which ensure that provincial interests are protected without sacrificing federal progress.

4. Inter-governmental institutions for other specific matters

In addition to the inter-governmental institutions designed to facilitate the adjustment of financial relations and the co-ordination of general economic policy, there have been a multitude of other inter-governmental councils, commissions and boards intended to make possible consultation and co-operation between central and provincial governments on specific activities of mutual concern. To cite only some of the examples there have been the River Boards, the Central Council of Health, the Inter-state Transport Commission, and the Drugs Consultative Committee in India; the provincial Advisory Boards for the central Posts and Telegraph Department and the National Council of Social Welfare in Pakistan; the National Council for Local Government in Malaya; the Tariff Advisory Board in Malaysia; the Police Council, the National Council on Establishments, the Minority Area Advisory Councils, the Joint Consultative Committee on Education, the Central Bank Advisory Committee, the Marketing Board, and the statutory boards of certain central corporations¹ in Nigeria; the inter-governmental committees on labour, agriculture, marketing, education and specific development projects, and certain territorial and central statutory boards containing representatives of the other level of government in Rhodesia and Nyasaland.

¹The regional governments are represented on the statutory boards of the Electricity Corporation of Nigeria, the Nigerian Ports Authority, the Nigerian Railway Corporation and the Nigerian Broadcasting Corporation.

Apart from such standing machinery for consultation between governments, in most of the newer federations there have been a wide variety of ad hoc conferences, composed of central and regional representatives, for the discussion of both general and specialized subjects. For example, in India there have been periodic meetings of state governors, of state chief ministers, of finance ministers, or of other state and central ministers or officials. Such inter-governmental conferences have been a favourite device in the other new federations also. The characteristic temper of these federations was exemplified in the instinctive reaction of the Indian Union government to respond to the Chinese invasion of 1962 by establishing an inter-governmental National Defence Council to advise the central government on military affairs and on the mobilization of public participation in the national defence.¹ It is clear that since the neat separation of central and provincial functions has been impossible, most federal systems have come to rely on a wide range of institutions facilitating consultation and co-operation between governments.

¹ Its membership included the central Prime Minister and six central cabinet ministers, the chief ministers of seven states, other major political leaders, the military chiefs of staff, and some officials and technical and scientific advisers.

5. Inter-governmental institutions for federal cohesion

In the newer multi-cultural federations, with their sharp linguistic, racial, religious and other cleavages, statesmen have often been fearful that a federal system might encourage increased separatism by marking off the different cultural groups into distinct provincial units. These statesmen have striven, therefore, to create standing machinery for general consultation among governments in order to foster federal cohesion.

Such institutions have been created in several federations, but India has done the most in this line. Especially interesting has been the Indian attempt in recent years to counter separatism. In November 1960 one of the subjects that was discussed at a Conference of Education Ministers was the distressing frequency with which disruptive tendencies were making themselves felt in the country. The Conference was concerned at the threat posed to national cohesion by the growing strength of linguistic regionalism, and stressed the importance of the role of education in counteracting the divisive trends and in fostering unity. As a consequence a Committee on Emotional Integration, consisting of twelve distinguished Indian leaders in education and politics, was set up in May 1961. Soon afterwards, in August 1961 a States Chief Ministers' Conference on National Integration was held at which resolutions were agreed upon in favour of a common script for all Indian languages, the establishment of new

all-India civil services, and the prohibition of any secessionist demands.¹ This was followed by a National Integration Conference, composed of Union cabinet ministers, chief ministers of the states, party leaders, and other prominent men, held at the end of September 1961. This conference discussed measures to promote national integration, safeguard the interests of linguistic minorities, and plan the national coordination of education. Among the principles agreed to were instruction in the mother tongue at the stages of primary and secondary education, acceptance of the three-language formula (Hindi, English, and the regional language) for each region, encouragement of students to study outside their home states, an emphasis in the educational system and the textbooks of each state upon the basic unity of the country, a code of conduct for political parties discouraging them from playing upon and aggravating linguistic and religious differences, and the diminishing of regional inequalities in economic development.² As an outcome of this conference a permanent inter-governmental body, the National Integration Council, was established to review and make recommendations on these matters. The

¹ Subsequently, the Constitution (Sixteenth Amendment) Act, 1963 prohibited the advocacy of secession.

² Statement issued by the National Integration Conference (Delhi, 1961).

membership of this council includes the Union Prime Minister and Home Minister, the chief ministers of all the states, leaders of political parties in Parliament, the commissioners for minority groups, and representatives of higher education and research. This body set to work in 1962 and soon stimulated a campaign to foster national cohesion. This campaign included the elaboration of a press code, the creation of new all-India civil services, the organization of a National Integration Week, and the taking of a national integration pledge by school children and citizens.

In the meantime, in 1962 the report of the Committee on Emotional Integration Committee also appeared.¹ The Committee assessed the existing situation in the following terms:

What has dragged the problem of Indian languages down to the arena of acrimonious debate is the attempt, by certain people, to make language a cloak for their ambitious designs in other fields, notably politics and employment. That language is the expression of a people's culture goes without saying, but when it is made a slogan it begins to give shelter to hypocrisy and exaggeration, as most slogans do. The fear, real or fancied, that if a language does not receive prominence, those speaking it will be denied opportunities of employment and political influence, is hardly ever expressed. It is generally mixed with other matters, some of which are of very minor importance. The riots which broke out in Assam a couple of years ago are a case in point.

If people from one part of India elect to take up their residence elsewhere, it is in their own interest to identify themselves with their new neighbours. One of the most potent methods of doing so is to

¹ Government of India, Ministry of Education, Report of the Committee on Emotional Integration (Delhi, 1962).

learn the local language and try to speak it properly. At the same time, one can understand the desire of linguistic minorities to have opportunities provided for their children to learn in their mother-tongue. The principle of providing such opportunities has already been accepted by the State governments, but its implementation may meet with some difficulty in the initial stages.

The Committee went on to recommend measures designed to ensure that in the first five classes of primary school the child would not be burdened compulsorily with more than one language. The child would study either the mother tongue or the regional language, but if a school wishes to start the study of another language at this stage it would be free to do so. In classes V to VIII the child would be introduced to two 'link-languages', Hindi and English, thus bringing into operation the 'three-language' formula. The Committee approved of the use of the regional language as a medium of instruction in colleges and universities in order to remove the gulf between the masses of the people and the intellectual élite, but also emphasized the importance of the 'link-languages' as essential for mobility and intercommunication between different parts of the country. These were necessary both for national unity and in order to speed the programmes for economic development and industrialization.

The Zonal Councils in India were another inter-governmental device intended to counter linguistic separatism and to foster inter-state cohesion. In the Constitution, as adopted in 1950, provision had been made for an Inter-State Council in order to facilitate consultation and co-operation among

state governments, but such a council was not activated.¹ Instead, Zonal Councils were created by the States Reorganization Act, 1956.² The Indian states were grouped into five Zones, each with its own Council, composed of the Union Home Minister and the chief minister and two ministers from each state in the Zone. These Councils were intended to provide a forum for closer consultation among the group of states and between the states and the central government on matters of common interest. Their work has been concerned primarily with questions connected with economic planning, but the councils have also discussed inter-state problems related to border disputes, linguistic minorities, official state languages, food distribution, irrigation waters, and police reserves. The Zonal Councils are deliberative and advisory bodies only and therefore in no way diminish the legislative and executive authority of the Union and state governments. When the issue of fostering national cohesion came to the fore in 1961, a Committee of Zonal Councils for National Integration was also established to discuss problems of common interest in all the Zones.

¹ Constitution of India, 1950, art. 263.

² On the Zonal Councils, see J.V. Bondurant, Regionalism versus Provincialism: a study in the problems of Indian national unity (Berkeley, 1958), chs. 3, 5, 6; M.V. Pylee, Constitutional Government in India (Bombay, 1960), ch. 42; B.N. Schoenfeld, Federalism in India (Washington, 1960), pp. 16-18; W.H. Morris-Jones, The Government and Politics of India (London, 1964), pp. 103, 144.

From these examples, it is evident that since 1960 there has been considerable concern in India to establish a wide range of institutions specifically aiming at cohesion among the different linguistic and cultural groups within the federation. The full impact of these devices is hard to gauge for soon afterwards the Chinese invasions of the northern frontiers in October 1962 added an enormous impetus which produced an almost unprecedented integration of the Indian nation, and more recently the brief war with Pakistan has further contributed to national cohesion.

None of the other new multi-cultural federations has gone to anything like the lengths which India did in establishing institutions specifically designed to foster federal cohesion. The 1956 Constitution of Pakistan did provide for an Inter-Provincial Council to facilitate consultation among provinces¹, but the 1962 Constitution omitted this provision, since with only two provinces there seemed little need for such formal machinery. In Malaya, during the operation of the Federation of Malaya Agreement, 1948, the Conference of Federation Executives, consisting of the central ministers, the chief ministers of the states, and the resident commissioners of the settlements, met before every meeting of the federal Legislative Council in order to consider prospective central legislation and policy. Under the 1957 Constitution it was provided that the Conference of Rulers, joined by the

¹Art. 130.

central Prime Minister and the state chief ministers might deliberate on questions of national policy.¹

6. Institutions for settling constitutional disputes

No matter how precise or complete the constitutional distribution of authority between central and provincial governments may be, the ambiguity of language, overlapping jurisdiction, and the occurrence of unforeseen problems are bound to provoke disputes about the terms of a federal constitution. Consequently, in most federal systems some independent agency or institution, usually a supreme court, has been considered necessary to act as an umpire for settling constitutional disputes.

Most multi-cultural federations have, like Canada, assigned this role of interpreting the constitution to supreme judicial bodies. There are some exceptions, however. In Switzerland the federal legislature is in effect the final interpreter of the Constitution. The courts may declare cantonal laws void if they conflict with the federal Constitution, but laws passed by the Federal Assembly are treated as valid.² There are limits upon the Federal Assembly, however, in so far

¹ Constitution of the Federation of Malaya, 1957, art. 38(3). This provision continues in Malaysia.

² See C. Hughes, The Federal Constitution of Switzerland (Oxford, 1954), pp. 122-124, regarding article 113 of the Constitution.

as most laws are subject to challenge in a referendum.¹ Among the new multi-cultural federations only Pakistan since 1962 and Malaya between 1948 and 1957 have not assigned the role of arbiter in constitutional disputes between governments to a supreme judicial body. The Pakistan Constitution of 1962 stipulated that in the case of inter-governmental disputes the Supreme Court might "pronounce declaratory judgments only" and added elsewhere that "the responsibility of deciding whether a legislature has power under this Constitution to make a law is that of the legislature itself."² In the Federation of Malaya the function of interpreting the Federation Agreement was vested prior to 1957 in ad hoc Interpretation Tribunals.³ These tribunals consisted of three members: the Chief Justice of the Supreme Court as chairman, and two other members who were either judges of the Supreme Court or possessed the qualifications for such judges, one being appointed by the High Commissioner and the other by the rulers of the Malay States. The appointments were made as the occasion arose. The 1957 constitutional commission rejected this general arrangement in favour of relying upon the

¹ See ibid., pp. 100-3, regarding article 89.

² Constitution of the Republic of Pakistan, 1962, arts. 57(2), 133(1).

³ Federation of Malaya Agreement, 1948, cls. 66, 153.

Supreme Court for several reasons. First, the states could not maintain their autonomy unless they were able to challenge in the courts as ultra vires both legislative and executive acts of the central government. Secondly, the insertion of a list of fundamental liberties in the constitution required the establishment of a legal procedure for challenging breaches of these rights. Thirdly, there were advantages in being able to obtain rapid decisions on constitutional questions. The 1957 Malayan Constitution, therefore, placed the responsibility of constitutional interpretation in the hands of the Supreme Court, and in the widened Federation of Malaysia the Federal Court performs this role.

In India, Malaysia, Nigeria, Rhodesia and Nyasaland, and prior to 1958 Pakistan, the role of constitutional umpire was assigned to a supreme court, as had been the case earlier in the United States, Australia and Canada. In the newer multi-cultural federations the supreme courts have generally been assigned extensive original and appellate jurisdiction. Inter-governmental disputes, with the exception of certain financial disputes sometimes assigned to special tribunals,¹ have normally been placed under the original jurisdiction of the supreme courts which have been given ultimate authority to interpret the constitution and to pronounce on the constitutional validity of any central or provincial laws. Where

¹See section 1 of this chapter regarding such tribunals.

fundamental liberties and special minority rights specified in the constitution impose limits on central and provincial governments, the supreme court has usually also been made the protector of these, either through its original or its appellate jurisdiction. In addition to tasks of constitutional interpretation, the supreme courts have usually been given a wide appellate jurisdiction over civil cases of high value, in certain criminal cases, and where the court permits, by special leave. Since in these new federations the law declared by a supreme court is binding on other courts within the federation, this appellate jurisdiction has made the supreme courts an important force for political cohesion through their capacity to promote a uniformity in legal interpretation.

Given the major role of a supreme court as the constitutional umpire within the federal system, its impartiality becomes essential. Thus the composition of the supreme judicial body and the manner of appointment and dismissal of its members become significant. In Canada some French-Canadian writers have been concerned about the composition of the Supreme Court and have argued that the two major cultural groups should be equally represented.¹ In the newer

¹See, for instance, Jacques-Yvan Morin, "Vers un nouvelle équilibre constitutionnel au Canada", in P.-A. Crepeau and C. B. Macpherson, The Future of Canadian Federalism; L'Avenir du fédéralisme canadien (Toronto, 1965), p. 153.

multi-cultural federations, however, despite their cultural cleavages, the regional or cultural composition of supreme courts has not been a particularly controversial issue. It is true that the supreme courts of Rhodesia and Nyasaland, of Nigeria (between 1958 and 1963) and of Malaysia have included the chief justices of the regional high courts as ex officio members of the supreme court, but this arrangement was motivated more by the need to provide the supreme court with a sufficiently large panel from which to draw. In Nigeria there was also a regional element in the composition of the Supreme Court in so far as each of four justices was appointed by the central government after consulting a different regional premier. But with these exceptions, the newer federal constitutions have contained no stipulations about the regional or cultural composition of the supreme courts.¹ Instead, primary attention has been focused upon ensuring as far as possible the independence of the courts and this has been reflected in the procedures specified for the appointment or removal of judges.

¹The Swiss Constitution (art. 107) does stipulate that the three official languages are to be represented on the Federal Tribunal, but does not specify their proportional representation. In practice the Assembly has seen that the main parties and both religious denominations are represented on the Federal Tribunal, as well as the three 'official' languages.

In the five newer multi-cultural federations the central cabinet has been given the last word in the appointment of supreme court judges, but, except in Rhodesia and Nyasaland, the central executive has been required by the constitution to consult certain bodies before making the appointments. In India, Pakistan, and Malaysia the executive is required to consult the Chief Justice (titled Lord President in Malaysia) about appointments of other members of the Supreme Court (called Federal Court in Malaysia). The central executive is also required in Malaysia to consult the Conference of Rulers¹ about all Federal Court appointments, in India to consult other Supreme Court Justices and the Chief Justices of the High Courts regarding the appointment of Chief Justices, and in Nigeria to consult a different regional premier for each of four justices.

To ensure the independence of these supreme courts, all the new federal constitutions have included provisions to the effect that judges might be removed only "on grounds of misbehaviour or of infirmity of body or of mind". A special procedure for removal has also usually been specified. In India, Pakistan (1956), Nigeria (1963), and Rhodesia and Nyasaland removal requires an address of the central legislature, passed by special majorities (except in Rhodesia and Nyasaland). In Pakistan since 1962 removal follows an

¹A body composed of the rulers or governors of all the states in the federation.

inquiry by a Supreme Judicial Council, and in Malaysia it follows investigation by a special tribunal. Other provisions, also designed to enhance the independence of supreme court judges have often been included in the constitutions. As a rule the constitution has contained provisions to ensure that the salaries and terms of office of judges might not after appointment be varied to their disadvantage. The Asian federations have also restricted discussion in the legislatures about the conduct of judges. Furthermore, the constitutions of India and of Pakistan (1956) also included provisions disqualifying justices from subsequently practising in the courts or accepting certain appointments.¹ The intention here was to discourage judicial decisions from being influenced by the hope of future advantage.

On the whole, in the newer multi-cultural federations there appear to be few signs of dissatisfaction with the impartiality which the supreme courts have displayed in performing their function as guardians of the guarantees embodied in the federal constitutions. In achieving acceptance as independent arbiters, the supreme courts have been helped not only by the constitutional provisions, but by traditions of the bar and bench safeguarding the integrity and independence of the judges in these countries.

¹ Constitution of India, 1950, art. 124(7); Constitution of the Islamic Republic of Pakistan, 1956, art. 150(2).

Chapter 7

THE ORGANIZATION OF CENTRAL INSTITUTIONS

1. The role of central institutions

One essential feature of any federal system is the autonomy of provincial governments making possible regional distinctiveness, but an equally important feature is the development of a sense of community among the different regional groups. A federation involves not only diversity on some viewpoints but also common agreement on at least some matters. No matter how much a federal system allows for differences of regional viewpoint, the federal solution is ultimately bound to fail unless it is able to develop at the same time a positive consensus among the different groups within the federation. The ability to generate such a consensus depends largely on the central institutions. The form of these institutions, the processes by which federal decisions are reached, and the participation of the different regional and cultural groups in arriving at these decisions all affect the extent to which a sense of community can be developed. In this chapter five aspects affecting the ability to generate a federal consensus will be examined: the central legislature, the central executive, the central civil service, the capital city, and the political parties.

2. The central legislature

In most of the newer multi-cultural federations the issue of regional representation in the central legislature has been a particularly controversial one. This is not surprising. In most of these federations the system of cabinets responsible to parliament has prevailed, and, therefore, control of the legislature has been the key to control of central power. Controversies over the organization of the central legislature have usually turned on two major issues. The first of these has been the problem of the appropriate regional composition of the central legislature. Smaller provinces have invariably opposed the principle of representation according to population, and have proposed weightage to favour smaller provinces or even provincial equality in order to prevent perpetual domination by the larger provinces. The larger provinces have usually been equally insistent that they should have their 'fair share' of power, often citing not only the principle of representation by population but also the financial support they have been required to give the smaller and poorer provinces. The second issue provoking controversy has been the method of election to the central legislature. Since the control of central power was what was at stake, it has sometimes been argued that members of the central legislature should be indirectly elected by the provincial legislatures rather than chosen by direct popular election. These suggestions have arisen in part

from the desire of provincial leaders to retain some control over central politics. These claims have been met by equally strong counter-arguments that such a scheme would be 'undemocratic'.

Out of the attempts in the newer federations to resolve these two issues has come a fairly common general pattern of organization for the central legislatures. Except in Pakistan and Rhodesia and Nyasaland, where unicameral legislatures were established, a bicameral legislature was adopted in each of the newer independent federations. The appeal of the bicameral solution lay in the compromise that was made possible between the conflicting viewpoints. A bicameral legislature makes possible the application of different principles of regional composition and method of election in the two central legislative houses. Thus, in India, Malaysia, and Nigeria the popular chamber is on the whole directly elected and regional representation, with some minor exceptions, is based on population. In the second chambers states are either equally represented, as in Malaysia and Nigeria, or state representation is weighted to favour smaller states, as in India, and in all three federations members of the second chamber are indirectly elected, being chosen by the state legislatures.

The exceptions in Pakistan and Rhodesia and Nyasaland to this general pattern were largely due to special circumstances. The first Pakistan Constituent Assembly had struggled with a variety of complicated bicameral schemes,

all of which caused heated disputes over the regional composition and relative powers of the two chambers.¹ Different arrangements for a balance of regional representation were advanced and in one of the schemes the executive would have been made responsible to both chambers. However, when the unification of West Pakistan in 1955 reduced the large variety of provinces and states within the federation to just two provinces, the second Constituent Assembly decided upon equal representation of the two provinces in the National Assembly, and rejected a second chamber as superfluous.² The 1962 Constitution continued this general arrangement.³ The solution adopted in Pakistan, if applied to Canada, would require the unification of all the English-speaking provinces into one single province, giving that province and Quebec equal representation in the central legislature. Such a solution would be unlikely to be acceptable in Canada, however, not only because of the already strong historical sense of identity of the provinces, but also because Quebec represents

¹ Basic Principles Committee, Interim Report (Karachi, 1950), paras. 30-9; Basic Principles Committee, Franchise sub-committee, Report (Karachi, 1952), pp. 1, 4; Basic Principles Committee, Report (Karachi, 1952), paras. 36-80; Basic Principles Committee, Report (as adopted, 1954), paras. 39-87.

² Constitution of the Islamic Republic of Pakistan, 1956, art. 43.

³ Constitution of the Republic of Pakistan, 1962, art. 19.

only 29 per cent of the total Canadian population, while the two provinces of Pakistan were fairly well balanced with 55 per cent of the population in East Pakistan and 45 per cent of the population in West Pakistan.

Nor does the example of Rhodesia and Nyasaland offer any better precedent. The establishment of a unicameral central legislature there was essentially a transitional arrangement and the Constitution expressly provided for the establishment later of a second chamber.¹ Moreover, in view of the continued controversies over representation in the Federal Assembly of Rhodesia and Nyasaland, this example serves as a poor advertisement for the adoption of a unicameral legislature in Canada.

But the establishment of a bicameral central legislature along the general lines adopted in India, Malaysia and Nigeria does not solve all the problems either. In each of these federations, adherence to the principle that the cabinet should be responsible to the popularly elected house led to the creation of second chambers which were relatively weaker in constitutional power than their respective popular chambers. In each of these federations the lower house has had substantially greater power through being given ultimate predominance in cases of ordinary legislation, through the

¹Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 97(5).

control of finances, and through the responsibility of the cabinet to it. For instance, ordinary central legislation in these federations may be introduced in either house and normally requires passage in both, but in cases of deadlock between the two the first chamber has always been given power to override the other, either simply by later repassage or by outnumbering the members of the other chamber in a joint sitting. Where money bills are concerned, the initiation of these has been restricted to the popular chamber, and the second chamber may as a rule play only an advisory role. The second chamber has usually been represented in the cabinet, and in most of the newer federations all cabinet ministers may be questioned in the upper house even when they are not members of it, but ultimately the cabinet has always been responsible only to the popular house.

The second chambers have, nevertheless, served as guardians of provincial and minority interests. In the case of constitutional amendment, they have had equal constitutional powers with the popular chambers, the approval of the second chamber, voting as a separate house normally being required. Furthermore, these second chambers, except the Nigerian Senate, have gained some stability and independence by being unaffected by the dissolution of the popular house. The Indian and Malaysian second chambers were 'permanent bodies', one-third of the former being elected every two years and one-half of the latter every three years. Furthermore, because of the manner of election

to the second chamber - in India election by state legislatures using proportional representation by means of the single transferable vote, in Nigeria appointment by governments subject in each case to the affirmative vote at a joint sitting of the legislative houses of that region, and in Malaysia election by the state legislative assemblies by simple majority ballot, any assembly member being free to make nominations - the second chambers have been a more genuine forum for the presentation of regional viewpoints than has the Canadian Senate. The Indian, Malaysian and Nigerian second chambers, in addition to the state representatives, have also reserved some places for members nominated either for their eminence or to represent special minority interests. In India these members constitute less than ten per cent of the total membership of the chamber, but in Malaysia they make up over 40 per cent of the Senate. But although the second chambers in these newer multi-cultural federations represent regional and minority viewpoints better than the Canadian Senate, the fact remains that in each case it is the popular chamber which, because of the cabinet system of government, remains predominant.

None of these second chambers has had anything like the power, constitutional or political, of the Senate in the American federal system. But the major role of the Senate in the United States is related to the separation of the executive from the legislature. The fact that the

central executive in Switzerland also has a fixed term helps to explain too the reason why the Swiss Council of States has been more effective than the second chambers in any of the Commonwealth federations. In Switzerland the cantons are equally represented in the Council of States, the method of election being determined by the canton.¹ In some cantons Councillors are directly elected; in other cantons they are elected by the cantonal legislature. The effect of the composition of the Council is to ensure that the two minority interests - the Roman Catholic and the non-German speaking areas - have a permanent majority in the Council of States if they vote together.² In practice, however, party divisions to some extent cut across this dividing line. Moreover, the effectiveness of other institutions for safeguarding constitutional rights, especially the referendum, has made the Council of States a less significant body than the American Senate.

In the newer Commonwealth federations, the relative weakness of the second chamber in relation to the popular chamber has meant that regional interests have sometimes disputed the notion that the popular house should represent regions strictly according to population. In India and

¹ Federal Constitution of the Swiss Confederation, 1874, art. 80.

² C. Hughes, The Federal Constitution of Switzerland (Oxford, 1954), pp. 88-9.

Nigeria the principle of strict representation by population was incorporated, but in the latter federation it provoked a series of constitutional crises when the census results of 1962-3 made it clear that the Northern Region would in effect be guaranteed a permanent majority in the House of Representatives. In Malaysia, representation in the House of Representatives has been based 'roughly' on population but rural areas are heavily favoured. Moreover, Sabah and Sarawak are consciously 'over-represented' in part because this was necessary to induce them to join, while Singapore was considerably 'under-represented' ostensibly because of the wider range of subjects over which the state possessed autonomous control.¹ The effect, however, was to give Singapore the feeling that it was not fully accepted as a member of the federation, and this contributed to the strains which culminated in the secession of Singapore in 1965.

The lesson for Canada in the experience of other multi-cultural federations would seem to be that there is no simple solution. The regional representativeness of the Canadian Senate might be improved if its members, instead of being nominated by the central government, were indirectly elected by the provincial legislatures. This might provide another channel of intercommunication between the two levels of government. The German Bundesrat, composed of delegates

¹An important factor also was the Malay desire to limit the extent of Chinese political influence.

from the states, usually members of state cabinets, performs this function particularly well. But as long as the system of cabinet government is maintained the real seat of central power will lie in the House of Commons. This means that the main responsibility for accommodating regional cultural viewpoints within a general consensus must lie with the political parties. In the United States and Switzerland the balanced institutions of the bicameral legislature provide the framework for this task, but in federations where power, legislative and executive, is concentrated in a single chamber, it is primarily within the political parties working in that chamber that the reconciliation of regional viewpoints in the formulation of a federal consensus must take place. The political parties, therefore, bear a much heavier responsibility for this task in parliamentary federations than in the United States or Switzerland.

3. The central executive

As we have already noted in the previous section not all federations have considered a parliamentary cabinet as the appropriate form of executive for a federal system. Both the United States and multi-cultural Switzerland have fixed-term executives, the former an elected Presidency and the latter a collegial Federal Council of seven members chosen for four-year terms by the central legislature.¹

¹Federal Constitution of the Swiss Confederation, 1874,
arts. 95-104.

Among the newer multi-cultural federations only Pakistan has chosen a fixed executive, adopting in 1962 a presidential form modelled in some respects on the American one.¹ It is in the other multi-cultural federations in the Commonwealth, then, that the closest parallels to the role of the cabinet in the Canadian Parliament are to be found.

The major point of interest here is the extent to which the parliamentary cabinet is able to be responsive to the interests of regional cultural minorities and to provide a focus for reaching a federal consensus. Because the executive is so important in modern government, there have been pressures for an adequate and balanced representation of provincial interests in the cabinets of all the newer federations. Similar considerations led to the stipulation in the Swiss Constitution that no more than one member of the seven-man Federal Council should be chosen from the same canton,² but the demands have been even stronger in the newer multi-cultural federations, both because the executive plays a more powerful role in the cabinet system than in the Swiss executive committee, and because of the inherently weaker position of the second chamber as a guardian

¹ Constitution of the Republic of Pakistan, 1962, arts. 9-18, 25, 31-36, 165-7.

² Article 96.

of minority interests when the cabinet is responsible to the other chamber. But although the pressures for a regional basis to representation in the cabinets have been extremely powerful, invariably it has been found necessary to leave the regional composition of the cabinet to convention in order not to restrict the principle of cabinet responsibility to the legislature. Nowhere, therefore, are there any constitutional stipulations about regional representation in the parliamentary cabinet.

Nevertheless, in practice an attempt has been made in the formation of cabinets in every one of the newer multi-cultural federations to represent all the major provinces or groups of provinces, and to balance the representation of major areas. In addition the central cabinet has usually been constructed to give significant minorities within provinces some representation also. The Indian cabinet for instance has always included members from the major provinces and all the Zones, but it has also consistently contained a Muslim, a member of the Scheduled Castes, a Sikh, and on some occasions a Jain or a Christian as well. In Pakistan after the unification of West Pakistan the two provinces were fairly equally represented in the cabinet. In 1947 the cabinet had included a Hindu, but after his defection no Hindus were appointed until 1955 when the convention quickly developed that the East Bengal representation in the cabinet should include a Hindu. In Malaya the

importance of racial balance in the cabinet has been clear. From 1958 on, the usual composition of the cabinet was 9 Malays, 3 Chinese and one Indian. Significantly, cabinet representation for Perak and Selangor where the Chinese and Indian communities are particularly strong, has been quite consistently divided between the Malayan Chinese Association and the Malayan Indian Congress in the former state , and between the M.C.A. and the United Malays National Organization in the latter state. In Nigeria not only have each of the regions been represented in the central cabinet but so also have the minority areas within each region. Indeed in 1960, ten of the twelve provinces within the Northern Region were separately represented in the central cabinet.¹ In Rhodesia and Nyasaland, too, each territorial unit was represented in the central cabinet, and in 1958 for the first time an African was made a Parliamentary Secretary. It would appear unlikely then that Canada can afford to dispense with the practice of paying considerable attention to the provincial and minority representation in its central cabinets. Indeed, the extent to which the central government is able to win the support of provincial and intra-provincial linguistic and cultural groups will depend

¹In Nigeria, the Regions are the autonomous political units, but these are themselves subdivided into administrative provinces.

to some extent not only on the presence within the cabinet of representatives of these groups but also upon the quality of these representatives. Here again, because of the nature of the parliamentary system, the ability to bring forth such men will depend on the extent to which the political parties are able to accommodate these groups among the interests which they aggregate.

But in stressing the importance of provincial and minority representation, one word of warning is necessary. If in the process majority groups become seriously under-represented, this too may lead to disaster. Indeed, under-representation in the federal cabinet and legislature was one of the main factors provoking Jamaica's dissatisfaction and eventual secession from the West Indies Federation. Jamaica, with over half the West Indian population never held more than two of the eleven seats in the federal executive and 17 (38 per cent) of the 45 seats in the House of Representatives. Even in the multi-cultural federations of India, Pakistan, Malaysia and Nigeria where care has been taken to give regional and cultural minorities representation in the central cabinet, it has always been necessary to give those provinces with the most populous electorates a predominant position. The issue, therefore, is one of achieving a delicate balance.

Although the adoption of parliamentary executives in most of the newer multi-cultural federations has made the post of Head of State largely a nominal one, nevertheless,

some importance has been attached to the position as one which might provide a focus for federal unity. Three of these federations, India in 1950, Pakistan in 1956 (and until 1958), and Nigeria in 1963, while retaining cabinet government decided to adopt a republican form in order to emphasize their independence.¹ The Governor-Generals were replaced by elected Presidents. Direct popular election was rejected, however, because of the expense that would be involved and because of the desire to emphasize the ministerial character of the government. In India, to give the President some independence from Parliament it was decided that the President should be elected by an electoral college composed of both Houses of Parliament and the elected members of the state legislative assemblies, the votes being weighted by a formula giving the Union and state legislators parity and making the voting strength of each state legislator proportionate to the population he represents. Election by a similar electoral college was envisaged in the 1956 Constitution of Pakistan, but the first election was left to the Constituent Assembly alone. In Nigeria a somewhat simpler procedure was adopted, the electoral college consisting of all members of both central houses. This to some extent favoured the smaller regions because of the

¹Malaysia is unique in having an elected Monarch. He is elected by the Conference of Rulers from among the hereditary rulers of the states. The Federation of Rhodesia and Nyasaland which was dissolved before it achieved independence had a Governor-General.

equal representation of regions in the Senate, and the importance of the smaller regions was further enhanced by the requirement of a two-thirds majority on the final ballot.

Just as Canada appears to be on the verge of a convention that the Governor-Generalship should rotate between English and French-speaking Canadians, so the new multicultural federations have given attention to similar considerations in the choice of ceremonial Heads of State. In India the first President was a northerner and the Vice-President a southerner. When the first President retired he was succeeded by the former Vice-President thus initiating what may become a convention of rotating the Presidency between men from the north and the south. Significantly, the second Vice-President was a Muslim northerner. In Nigeria when Nnamdi Azikiwe, a southerner, was elected the first President at a time when the Prime Minister was a northerner, public attention was consciously drawn to the fact that the two most prestigious central posts had been divided between a northerner and a southerner. Something of the same sort of convention developed in Pakistan until the suspension of the constitution in 1958. One of the two senior offices of Prime Minister or Governor-General (or President after 1956) usually went to an East Pakistani and the other to a West Pakistani. But the instability of cabinets in Pakistan, which resulted in seven Prime Ministers and

four Governor-Generals and Presidents in the period 1947-58, made the convention of dividing the two posts regionally an awkward one to maintain when changes of ministry were so frequent. It would appear, however, that every multi-cultural federation has felt the need to draw the loyalty of minorities by making the senior ceremonial post open to members of each of the major regional or cultural groups within the federation.

4. The central civil service

Because of the expanding role of governments in contemporary society, the organization and regional composition of the central civil service may have an enormous impact on the ability of the central institutions to generate a sense of common purpose. In the first place, it has frequently been argued that if the government and its administrative services are to be sympathetic and responsive to the needs and interests of the minorities as well as the majority, then they are more likely to do this effectively if the central civil service includes within its membership a healthy proportion from the varied linguistic and cultural groups within the federation. Secondly, as we have already noted in chapters three and four, in many cases tensions between linguistic and cultural groups have often had at their root frustration at the lack of opportunity to participate in the public services. Given the opportunity to serve as full partners in the administration of the

country, linguistic or cultural minorities are far more likely to develop a sense of commitment to the federal union.

But while the representation of the different cultural groups in the central public service is in principle clearly desirable, in practice the solution has rarely proved simple. There are two reasons for this. First of all, the principle of representation of cultural groups in the civil service may conflict with the principle that appointments and advancement should be based on merit. Within the last century the notion has become widely accepted that efficient administration depends upon appointing the ablest and best qualified men. But this criterion will not necessarily produce a service which is regionally or culturally balanced. Indeed, the problem is complicated by the fact that usually, as noted in chapter three, different linguistic and cultural groups are characterized also by differences in degree of modernization. Consequently, in most multi-cultural federations certain linguistic or cultural groups have been handicapped by some features of their educational and social system and have therefore suffered in the competition for civil service positions. In such a setting, the central services have often been reluctant to appoint men with qualifications inferior to those of other candidates, while those candidates from the less advanced cultural groups who have been rejected have then interpreted this as discrimination against their group. Thus, there is a difficult balance

to be drawn between, on the one hand, emphasizing efficiency, and on the other, providing all the major regional and cultural groups with a sense of participation.

A second difficulty is the complexity in internal communications which arise within a single public service composed of different linguistic groups. If in the interests of administrative simplicity most administration is to be carried on in the language of the majority, civil servants from the other linguistic groups are not likely to find the atmosphere congenial and will be discouraged from seeking a career in that service. On the other hand, if administration is carried on in two or more languages the process of communication becomes greatly complicated. It also tends to put the premium upon linguistic skills rather than administrative skills. This is the dilemma which has faced all multi-lingual federations, just as it is facing Canada. This second aspect will be dealt with separately, however, in the next chapter as part of the question of the choice of official languages. In this section attention will be focused on the composition and structure of the central public services.

In India the candidates from some states have consistently failed for years to compete successfully in the competitions for the all-India public services. This pattern has been the result of differences in educational, social and economic standards among the variety of linguistic

groups. Indeed, this situation was itself a factor in the demand soon after independence for the reorganization of states on linguistic lines in order that each linguistic group might at least have a favoured position for employment within its own state public service.¹ The Indian Constitution itself contains a number of provisions intended to ensure equality of opportunity in the public services and to guarantee special consideration to certain groups who might otherwise be neglected.² First of all an article is included among the justiciable fundamental rights to the effect that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office". This article goes on to prohibit specifically discrimination in employment in the public services on "grounds only of religion, race, caste, sex, descent, place of birth, residence" and at the same time permits "the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is

¹ Report of the States Reorganization Commission (Delhi, 1955), paras. 123, 786-91.

² Constitution of India, 1950, arts. 16, 335, 336, 338. These are among the articles reproduced in Appendix 6 to this study.

not adequately represented in the services under the State."¹ In addition to this general provision special guarantees are provided to the members of certain groups which might otherwise have difficulty obtaining positions. The members of the scheduled castes and tribes are guaranteed special consideration in appointments to the public services and the members of the Anglo-Indian community have had reserved a specified proportion of posts in certain services. Furthermore, the Special Officer for the Scheduled Castes and Tribes is required to report to the central government on the working of these guarantees. Thus a conscious effort has been made to temper the policy of selection by examination and promotion on merit by introducing some considerations favouring handicapped minorities.²

In Pakistan during the first decade one of the strongest factors behind the movement for greater autonomy for East Bengal was the feeling of Bengalis that the civil service and the armed forces were primarily in the hands of

¹ Art. 16. The term 'the State' here includes the Government and Parliament of India, the Government and the Legislature of each state, and all local authorities. See art. 12.

² On selection procedures and the organization of the civil service see especially A. Chanda, Indian Administration (London, 1958), pp. 104, 114-118; W. H. Morris-Jones, The Government and Politics of India (London, 1964), pp. 120-141.

West Pakistanis.¹ For instance, it was complained in 1956 that of 776 positions in the superior civil service 734 were held by West Pakistanis and only 42 by Bengalis in spite of the fact that the latter represented over half the federal population.² The impact of Bengali dissatisfaction with this situation appears in the 1962 Constitution. Among the 21 'Principles of Policy' set forth, no less than five are related in some way to the question of opportunity in the public services.³ In addition to statements concerning equality of opportunity to enter the public services, a goal is specifically pronounced that "parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable be achieved,"⁴ and there is also a provision for the maintenance of regional quotas for recruitment to the public services.⁵ Thus in Pakistan, even

¹ See for instance Second Constituent Assembly of Pakistan, Debates, Vol. I (1956), pp. 1845, 1909-10, 1998, 2049-50, 2104, 2122-3. See also K. B. Sayeed, Pakistan, the formative phase (Karachi, 1960), pp. 384-5.

² Second C.A.P. Debates, Vol. 1, p. 2050.

³ Constitution of the Republic of Pakistan, 1962, art. 8, principles 3, 6, 14, 16, 17. These are among the sections reproduced in Appendix 6 to this study.

⁴ Art. 8, principle 16.

⁵ Art. 240.

more than in India, attention to the provincial and linguistic composition of the central services has proved necessary in order to reduce internal tensions. In practice, it will take some time before the Bengalis can make up for the small number appointed from that province in the early years after independence, but there is now at least a commitment to providing them with parity. There are some parallels here to the position of the French Canadians, although it should be noted that in Pakistan the Bengalis actually do form at least half of the federal population and based their claim to parity on their numerical strength as well as upon their cultural distinctiveness.

An unusual feature in both India and Pakistan has been the existence of integrated all-India and all-Pakistan services which serve both central and provincial governments. Such services had been a feature of India under British rule and were carried over by the two federations after independence. These services include the Indian Administrative Service (I.A.S.) and the Indian Police Service (I.P.S.) in India,¹ and the Civil Service of Pakistan (C.S.P.) and the Police Service of Pakistan (P.S.P.). The recruitment and general pattern of these services are under

¹In 1961 the creation of three new all-India services was authorized: the Indian Service of Engineers, the Indian Forest Service, and the Indian Medical and Health Service.

the control of the central governments, but officers may be posted to either the central or the provincial governments, and the posting and promotion of an officer while serving in a province come within the power of the provincial government. These have been the elite services and in practice their members have occupied the highest positions in both the central and state administrations. In India these services have been organized in state cadres, each entrant being allocated to a particular cadre, but, in the interests of furthering integration and seeking impartiality from local influences, about half of each state's cadre is composed of entrants from outside the state. The all-Pakistan services were initially more centralized, however, but, because rapid transfers tended to give the impression that these civil servants were not really interested in the province in which they were served, President Ayub has insisted on a policy designed to associate these civil servants with the provinces in which they serve for a longer period. Thus, in both India and Pakistan there has existed, in addition to the separate central and provincial civil services, these joint services, recruited on a federation-wide basis, with common qualifications and a uniform scale of pay, the members of which have occupied the strategic posts in both central and provincial governments. As such they have been important instruments for federal cohesion. Indeed

one writer speaking of India has commented: "Above all, the all-India services have come increasingly to be seen as a great force for national integration, in many respects more reliable for this purpose than the all-India political parties".¹ Another writer has said of Pakistan: "In a country plagued with political instability and extreme demands for provincial autonomy, the Civil Service of Pakistan has played both a stabilizing and unifying role".² Although the traditions of Canadian federalism would appear to make the creation of such a service unlikely, federal cohesion in Canada might well benefit from an elite joint higher civil service in which the members would be bilingual and might serve at both federal and provincial levels.

In Malaya and now Malaysia, racial representation in the civil services has always been a critical issue. Under British rule the indigenous Malays were generally favoured in the civil services and came to dominate them while the more industrious Chinese concentrated on commerce and industry. With the coming of independence, the Malays, as a group less advanced educationally than the Chinese, feared that they would lose their own favoured position as the indigenous race to the more aggressive and advanced

¹ Morris-Jones, Op. cit., p. 121.

² Sayeed, Op. cit., p. 401.

immigrant Chinese, while the Chinese and Indians resented the special treatment accorded to the Malays which seemed to rank non-Malays as second-class citizens. The issue was an explosive one and a delicate but fragile balance was worked out. The Constitution includes among the fundamental liberties a specific article on equality of all citizens before the law and prohibits discrimination on religious, racial, or regional grounds in employment for any public services.¹ This is reinforced by a further article requiring impartial treatment in the terms and conditions of employment for any federal civil servant.² But in addition to these general statements specific provision has been made "to safeguard the special position of the Malays" by the reservation for the Malays of a "reasonable" proportion of places in the civil service, and provision has also been made for similar quotas for the natives of the Borneo states.³ In practice the Chinese and Indians have been entering the civil service in ever increasing numbers, but the bureaucratic élite is still primarily Malay in composition, and the constitutionally sanctioned

¹ Constitution of the Federation of Malaysia, 1963, art. 8 (see Appendix 6).

² Art. 136 (see Appendix 6).

³ Arts. 153, 161A (see Appendix 6).

recruitment quota of four Malays to each non-Malay ensures that the federal civil service will retain its predominantly Malay character indefinitely.¹ Thus, the position of the Malays and the natives of Borneo is protected, while they try to close the gap in modernization which exists between them and the other groups, but because the quotas are so restrictive upon the Chinese and Indians these groups continue to feel some frustration.

In Nigeria, too, uneven educational development has been a complicating factor. At the time when the federal system was first established in 1954 most educated Nigerians came from the south and, therefore, the lower ranks in the civil service throughout the country had up to that time been manned primarily by southerners. Indeed, one of the strongest motives behind the northern insistence upon the conversion of the unitary system into a federal system with full regional autonomy was the fear that when independence was achieved and the expatriate senior civil servants left, southerners would step into their shoes. Although the adoption of a federal system ensured the "northernization" of the Northern Region civil service, there still remained the problem of regional balance within the central civil service. As in the other multi-

¹R.O. Tilman, "Policy Formulation, Policy Execution and the Political Elite Structure of Contemporary Malaya," in W. Gungwu (ed.), Malaysia (London, 1964), pp. 352-3.

cultural federations a provision was specifically included among the fundamental rights prohibiting discrimination against any "particular community, tribe, place of origin, religion or political opinion", but some qualifications to the application of this article in cases of appointment to the public services weakened its force.¹ Although the constitutional provisions on this issue have been less complete than in the Asian federations, in practice because of the strength of political feeling on this issue and also because the country had insufficient graduates to fill its needs, a considerable number of able northerners, among whom it was difficult to find graduates, have simply been promoted from the lower ranks to the upper echelons of the federal administration. Also by custom a tendency has developed since 1954 whereby the federal field administration was left in the hands of citizens of the region concerned.² This arrangement has had the advantage that the field officers, familiar with the local people and their language, have avoided alienating the local people towards the central government. Generally over the last decade, then,

¹ Constitution of the Federation of Nigeria, 1960, s. 27; Constitution of the Federal Republic of Nigeria, 1963, s. 28 (see Appendix 6).

² E. O. Awa, Federal Government in Nigeria (Berkeley and Los Angeles, 1964), p. 172.

considerations of regional balance within the central civil service have been extremely influential in Nigeria.

In Rhodesia and Nyasaland, the settler domination of the political system was reflected in the predominance of settlers in the central civil service and particularly the higher posts. The Constitution did establish a special body, the African Affairs Board, with special powers to reserve for consideration by the British Government any bill which in the opinion of the Board was a "differentiating measure".¹ Thus, any legislation or order by which Africans were subjected to conditions, restrictions or disabilities disadvantageous to them to which Europeans were not also subjected might be set aside. But this proved a weak safeguard when the British Government refused to block the Constitution Amendment Bill, 1957, and the Electoral Bill, 1958, which the Board had referred to it.² Moreover, although the Board was empowered to make representations on any matter within the executive authority of the central government, there was little it could do since the main reason for the settler predominance in the higher

¹ Constitution of the Federation of Rhodesia and Nyasaland, 1953, arts. 67-77 (see Appendix 6).

² Cmnd. 298/1957, Federation of Rhodesia and Nyasaland, Constitution Amendment Bill, 1957 (London, 1957), Cmnd. 362/1958, Federation of Rhodesia and Nyasaland, Electoral Bill, 1958 (London, 1958).

civil service was due to the lack of similar opportunities for education among the Africans. It was hardly surprising, therefore, that the Africans of the Central African federation developed little sense of loyalty to a government whose senior civil servants were predominantly European.

Experience in these other multi-cultural federations would seem to suggest that in the interests of federal cohesion a compromise in the staffing of the central public services must be struck between the principles of merit and balanced regional and cultural representation. The latter criterion is necessary if minority groups are to feel a sense of genuine partnership in the administration of the country. The means to achieving this would seem to be two-fold. In the long-run it may be achieved by assisting the educational systems which lag behind. In this manner there might be a reduction in regional differences in ability to succeed in the competition for posts. Such a programme must be carefully designed, however, to ensure that the modernization of an educational system does not itself undermine the distinctive regional culture to which it is related. In the meantime, since educational systems cannot be revised quickly and easily, and since inevitably some cultural groups will be at a disadvantage with others in competing for posts, most federations have found certain

constitutional guarantees necessary, both in the form of a general fundamental right to freedom from discrimination and also in the form of guarantees and even quotas for special groups.

5. Federal capital cities

Within multi-cultural federations the position and character of the federal capital city has often been a source of considerable controversy. Three issues have especially provoked debate: first the location of the capital, second the assignment of responsibility for the administration of the capital, and third the extent to which the capital truly represents the multi-cultural character of the federation.

A number of considerations have generally been considered relevant to the siting of the capital city. It should not be too remote in location from any of the major regional centres of population; it should be adequately served by communications to all parts of the federation, it should have available adequate services and facilities for the activities which are usually required in a capital city, and, where a new capital is chosen, the cost of its establishment and development should be reasonable.¹

¹ For a discussion of these questions in some recent federations see esp. Col. No. 328/1956, Report of the British Caribbean Federal Capital Commission (London, 1956), p.3 and ch.2; Cmd. 8934/1953, Report by the Conference on the Nigerian Constitution (London, 1953), Annex V; Cmnd. 1148/1960, Report of the Advisory Commission on the Review of the Constitution of Rhodesia and Nyasaland (London, 1960), paras. 263-6.

One of the questions facing new federations has been whether to establish the federal capital in a new city or to use an existing city as a base. Often regional rivalry and the need to dissociate the capital from any particular state or province have made a new federal capital necessary. Among federations in the Commonwealth, examples have been the creation of Canberra in Australia, the transfer of the capital of India from Calcutta to Delhi in 1912, the setting up in Pakistan of a new capital called Islamabad near Rawalpindi. At the formation of the West Indies Federation and the Federation of Rhodesia and Nyasaland, the setting up of new capitals was seen as a development likely to be required in the future, but to be postponed at the beginning. In each the constitution therefore gave to the central legislature express power to set up a new capital. In other federations, however, savings in cost and the ready availability of services have encouraged the choice of a well developed city or even an existing provincial capital. Examples have been the choice of Lagos in Nigeria, Kuala Lumpur in Malaya, and initially Karachi in Pakistan. For similar reasons Salisbury in Rhodesia and Nyasaland, and Port-of-Spain in the West Indies were chosen as temporary federal capitals until more permanent ones could be established later. In the case of Malaya, when Kuala Lumpur, the capital of the state of Selangor, was chosen as the federal capital, it was intended that eventually the state capital would be moved to a different location at Klang. In many of these federations, as in Canada, resentment has often been felt in those provinces relatively remote

from the capital because of their lack of influence in national politics. Examples have been the feelings of southern Indians towards Delhi, East Bengalis towards Karachi, Northern Nigerians towards Lagos, Jamaicans towards Port-of-Spain and Nyasalanders towards Salisbury. In Pakistan some attempts have been made to reduce such resentments by establishing a subsidiary federal capital. The 1956 Constitution provided for meetings of the National Assembly and the Supreme Court to rotate between Karachi, the federal capital, and Dacca in East Pakistan. The 1962 Constitution went a step further. Two federal capitals were established: one in the west, Islamabad, serving as the seat of the central government for its diplomatic and administrative activities, and the other in the east, Dacca, becoming the seat of the National Assembly. Arrangements for subsidiary capitals were also advocated in Central Africa and in India, but never implemented, although in India the President does during each year rotate his residence between north and south India. A bicultural Canada might consider following Pakistan's example by officially establishing separate "English-speaking" and "French-speaking" capitals. In a sense, the use of Montreal as a headquarters for some federal departments or agencies is a step in this direction. Nevertheless, the administrative complications created by dual capitals suggest that a more appropriate alternative would be to take the existing capital city of Ottawa as the base for a single bilingual and bicultural federal capital, since it is relatively well served by facilities and communications already developed there, and is

situated on the border between Ontario and Quebec. If Hull were incorporated in the federal capital district, the federal capital might then really straddle the boundary between Ontario and Quebec.

In most federations the relative roles assigned to the central and provincial governments in the administration of the federal capital has also been a source of controversy.¹ Indeed, even in such recent federations as India, Pakistan, and Nigeria frequent adjustments have had to be made in the status and jurisdiction over the federal capital cities.² Provincial jealousy and the desire to develop the federal capital as a genuine focus for national unity have usually induced demands that the capital be freed from the influence of the government of the state or province in which it stands. On the other hand, where there have been close ethnic and economic ties with the adjoining region or province, as in Lagos and Karachi for

¹ See J. Harvey Perry, Report on the Financial and Administrative Arrangements in Capitals of Federal Territories (Lagos, 1953).

² Regarding India see: Constitution, 1950, arts. 239-241 and First Sched., Government of Part C States Act, 1951 (XLIX of 1951), s.21; Report of the States Reorganization Commission (1955), paras. 580-594; Constitution (Seventh Amendment) Act, 1956, ss. 2, 17; Delhi Municipal Corporation Act, 1957 (66 of 1957). Regarding Pakistan see G.G.O. 14/1948 and Establishment of West Pakistan Act, 1955, s. 2. Regarding Nigeria see Cmnd. 207/1957, Report by the Nigeria Constitutional Conference (London, 1957), paras. 55-6, and Cmnd. 569/1958, Report by the Resumed Nigeria Constitutional Conference (London, 1958), paras. 22-4.

instance, attempts at separation of the capital city from that province have aroused considerable resistance. Generally one of two patterns has been followed. In Australia, India, Nigeria, and Pakistan between 1948-55, the federal capital was separated as a distinct centrally administered 'federal territory' with its own local municipal government. Under this arrangement in India (after 1956) and Nigeria, citizens in the federal capital were given control of their own local affairs, but all other jurisdiction was placed in the hands of the federal government. The authority exercised elsewhere by the middle tier of government, the states or provincial governments, was thus placed in the hands of the federal government. Pakistan, after 1962, Malaya, Rhodesia and Nyasaland, and the West Indies followed a second pattern. Federal capitals were not separated from the provinces in which they were located. Provincial laws applied in these capitals, although the central government was given special extensive legislative and administrative powers with respect to them.¹ In Malaya, Rhodesia and Nyasaland, and the West Indies this policy was related to the selection as federal capitals of cities which had been capitals of the state or territory in which they stood. This

¹ Constitution of the Federation of Malaya, 1957, art. 154 and Federal List items 6(e), 7(h); Constitution of the Federation of Rhodesia and Nyasaland, 1953, art. 6; Constitution of the West Indies Federation, 1957, art. 6; Constitution of the Republic of Pakistan, 1962, art. 131(4).

made their separation from the state especially awkward. Canada in the past has, of course, followed the second of these patterns, although since Ottawa is not the capital of Ontario, its detachment as a federally administered state would be less awkward.

In addition to the site of the federal capital and the assignment of authority over the administration of the capital, emphasis has been put, in most of the new multi-cultural federations, on the extent to which the federal capital city might serve as an inspiring focus for federal unity.¹ In the first place not only should its buildings be dignified, well related and well built, but if the capital is to fulfil its function, it must be a pleasant place in which to live and work. People from all the provinces must feel at home there and must not be subject to constant irritations and frustrations. Moreover, if it is to serve its purpose fully, the capital should be something more than a place where legislators, administrators, and diplomats live and work; it should be representative of all that is best in the political and social life of the federation and a place which stimulates the growth of the wider ideas on which development of the country depends. Its outlook as far as possible should be multi-cultural and not provincial, for persons of distinction who work in, or visit the capital, should be able to expect to find there a society which is congenial to them. An extreme example of the

¹See, for instance, Col. No. 328/1956, Op. cit., ch. 2.

unfortunate effects of a capital which fails to fulfil these requirements was Salisbury in Rhodesia and Nyasaland. A major factor causing the dissatisfaction and suspicion of the Africans in the northern territories of the Federation of Rhodesia and Nyasaland was the siting of the federal capital in Salisbury where the prevailing practices of racial discrimination meant that Africans who came to the capital found most of the amenities of the city denied to them. In other federations, too, similar irritants have helped to provoke regional resentment - examples are the feelings of the northern Nigerians towards Lagos, not simply because of its remoteness from the North, but also because northerners have not felt at home there and have even experienced outright hostility. It is the desire to avoid such difficulties that has in many of the new federations led to the creation of a new and separate federal capital under the direct jurisdiction of federal government. Experience in other multi-cultural federations suggests that if Canada aspires to being a genuinely bilingual and bicultural federation then there are dangers inherent in the existence of a capital which is not itself bilingual and bicultural. A federal capital must serve both as a focal symbol of the federation and also as a place where people from each of the major linguistic and cultural groups may find the cultural atmosphere congenial to their own heritage. As far as site is concerned, it would seem unrealistic to abandon the already developed facilities of Ottawa, but the city might be given a more bicultural

atmosphere if the federal capital area were enlarged to include the Hull area. Moreover, if the dual cities were separated from their respective provinces, and placed under more direct federal administration, this might facilitate a growth in the bilingual character of the city, and make easier the provision of French language schools and education for children of the French-speaking officials and public, thus removing some of the existing French-Canadian resentment at the "English" character of the federal capital. If the local residents of the present city of Ottawa were to be persuaded to accept such a scheme, however, it would be essential not to deprive them of their federal franchise or of a measure of autonomous municipal administration.

6. Political parties

It has already been suggested earlier in this chapter that in those federations where a parliamentary executive has been adopted, as in Canada, the major responsibility for generating a consensus among the diverse linguistic and cultural groups falls upon the political parties.¹ It is true that in other federations political parties play a fundamental role in the aggregating of the varied internal interests, but in such federations as the United States and Switzerland the separation of powers between different central institutions provides a framework of checks and balances which requires the majority to take account of minority viewpoints. In the

¹ Sections 2 and 3 above.

parliamentary system, however, all central power is concentrated in the majority which commands both the legislature and the executive. It is within the parties themselves, therefore, that minority viewpoints must make an impression if they are to have any impact on central policy at all. Apart from the desire to capture the majority of seats in the popular house, there is little in the parliamentary framework of the institutions that forces politicians to look for compromises.

The importance of the political parties as the major instrument for generating a federal consensus is vividly illustrated by the experience of the other multi-cultural federations which have also adopted a parliamentary cabinet system. Two of the federations have been notably, and in the eyes of some commentators surprisingly, stable and successful. The first is India. The second is Malaya, or Malaysia as it has been since 1963. What has distinguished these two federations from the others has been the pattern of their political parties. The Indian National Congress and the Alliance Party of Malaya and Malaysia have each dominated the politics of their respective federations and have provided a focus for federal political unity because they have consciously set out to accommodate under a comprehensive umbrella all the varied interests of the different linguistic and racial groups in these federations. By contrast, the newer federations which have suffered military take-overs - Pakistan and Nigeria - or simple disintegration - Rhodesia and Nyasaland and the

West Indies - were all marked by political parties which were primarily regional rather than federal in outlook, or which deliberately failed to accommodate the desires of significant minority groups.

For example, in Pakistan until 1954 the highly centralized Muslim League dominated both the central and the provincial governments. But this party, focused most of the economic development on West Pakistan and neglected East Bengal to such a degree that one member of the second Constituent Assembly declared: "East Bengal is bleeding from the wounds inflicted by the Muslim League coterie."¹ The result was the complete rejection of the Muslim League by East Bengal in the 1954 elections² and the demand for widely extended provincial autonomy. From this time on, different parties came to dominate the eastern and western provinces, and central politics became a sequence of shifting factions and unstable coalitions. This was accompanied by growing provincialism. Finally, in 1958 party strife had reached such a state, that the army stepped in and removed the politicians from the scene, replacing them by the administrative paternalism of the army and the civil service in partnership. It is noteworthy that later, when

¹ Second Constituent Assembly of Pakistan, Debates, Vol. 1, p. 2119.

² The Muslim League won only 10 out of 309 seats in the 1954 provincial election in East Bengal and never recovered in that province.

the Constitution Commission of 1961 examined the reasons for the failure of constitutional government in Pakistan, the Commission put the blame, not on the federal structure which it considered satisfactory, but squarely on the "lack of leadership resulting in lack of well organized and disciplined parties".¹ It was this conclusion which motivated the arrangement in the 1962 Constitution for a presidential executive which would not be dependent for its stability upon the legislature or political parties.

Nigerian politics was dominated by regional political parties right from the beginning of the federal system. Up until 1962 there were three major political parties, the Northern People's Congress (N.P.C.), the National Convention of Nigerian Citizens (N.C.N.C.)², and the Action Group (A.G.), each based primarily on a single region. Each of these controlled the government in its own region and in spite of attempts by both the N.C.N.C. and the A.G. to become national parties, electoral trends up to 1962 showed an increasingly regional solidarity in the voting support for Nigerian political parties. The regional character of the parties was further emphasized by the fact that until 1959 the national

¹Report of the Constitution Commission, 1961 (1962), para. 25.

²Named National Council of Nigeria and the Cameroons until the secession of the Southern Cameroons.

leaders of all three parties preferred to remain as regional premiers, leaving central politics to their lieutenants, and even after 1959 this remained the situation in the N.P.C., and after a brief interlude also in the N.C.N.C. Thus, the central government rested on a coalition of regional parties: a coalition of all three between 1957 and 1959, and a coalition of the N.P.C. and the N.C.N.C. between 1959 and 1964. The balance of regional parties was upset in 1962, however, by the split within the Action Group, arising out of differences between the national leader, Obafemi Awolowo, and the Western Region premier, S. L. Akintola. The resulting emergency within the Western Region, the splitting off of the new Mid-Western Region, and the controversy over the 1962 and 1963 census results completed the destruction of the balance. Where before, each party had found it necessary to compromise in order to participate in federal policy-making, parties became increasingly intransigent. The N.P.C., as a result of the increasingly regional character of voting in the Northern Region found that it could dominate central politics without depending so much on the other regional partners, while its coalition partner, the N.C.N.C., now became alarmed at the prospect of permanent northern dominance. In the manoeuvring preceding the federal elections in 1964 a realignment of parties took place, the N.C.N.C. allying itself with the Action Group, and the N.P.C. turning to Akintola's new Nigerian National Democratic Party. Party advantage rather than the attempt to create a federal consensus became the predominant

motive, and the lengths to which the N.P.C. and N.N.D.P. went in rigging elections during 1964-5 in order to retain power became a source of increasing unrest, until early in 1966 constitutional government was terminated.

In Rhodesia and Nyasaland the difficulty was not in the regional character of the political parties. Between 1954 and 1960 the United Federal Party and its territorial affiliates dominated all governments at both levels. The party was solidly supported by settlers who dominated the electorate in all three territories, but the fatal flaw lay in the failure of this party to appeal to the African populace. Consequently, when the territorial franchise was extended in Nyasaland by the British Government, the result was the overwhelming victory in the 1961 Nyasaland elections of the Malawi Congress Party, committed to secession. Soon afterwards Northern Rhodesia also had its own African government for the first time, and thereupon insisted upon also seceding from the federation. Thus, the United Federal Party, despite its earlier electoral triumphs failed in the major task of bringing the Africans into the federal partnership and so laid the seeds for the disintegration of the federation.

The dangers inherent in the failure to develop at least one party which aggregates the major groups within the federation is illustrated by the disintegration of the West Indies Federation. By comparison with the others this federation was culturally relatively homogeneous. Moreover,

the Federal Labour Party which held central power was affiliated to parties controlling the governments of Jamaica, Trinidad, Barbados, and most of the smaller islands. But this was largely a façade. The F.L.P. and its opposition, the Democratic Labour Party, each represented little more than electoral alliances. The principal leaders of the island parties on the whole preferred to hold the fort at home, sending a 'second team' to contest the central seats. The F.L.P. was further weakened by the clash of personalities among the major central and island leaders of the party which was expressed in repeated public clashes. In this atmosphere the F.L.P. generated little warmth in support of the federal system which lasted a mere five years.

To these examples must be contrasted the Indian National Congress Party and the Malaysian Alliance Party. The linguistic and cultural divisions of India are no less deep than those of the other federations. But over the years, especially during the days when it was the focus for the movement for independence, the Congress Party learnt the importance of reconciling regional and cultural differences in the interests of unity. Since independence it has continued to emphasize this aspect of its role with the result that it has been the governing party in central politics for two decades and over that period has also controlled most of the state governments. This general preponderance of the Congress Party at both levels of government has been a powerful force for harmony

in central-state relations in India. It is significant that inter-governmental friction has been much sharper in the few instances where opposition or coalition ministries have been formed in the states.¹ The success of the Congress Party has rested on a mixture of centralization and decentralization in its organization and policy-making. As a legacy of the integrated independence movement, the state Congress committees have been accustomed much more than Canadian parties to look for guidance and to take directions from the central Congress committees. At the same time a new and influential group of political leaders deeply rooted in their regions has been emerging in the states, and the focus of power and influence within the Congress has in recent years shifted considerably from the central organization to those in the states. This is illustrated by the way the chief ministers in the states have come to play an extremely important role in the decisions of the party.²

Like the Congress, it was during the movement for independence that the Malayan Alliance Party learnt the importance of reconciling racial groups in the interests of unity. This

¹Of the six proclamations of emergency rule in the states before 1963, five struck down legislatures which supported opposition or coalition ministries or had unseated a Congress ministry.

²An example was the role of certain key chief ministers in the states in the selection of Mrs. Gandhi as Prime Minister Shastri's successor.

party was formed as an alliance of three clearly racial parties - the United Malay National Organization (U.M.N.O.), the Malayan Chinese Association (M.C.A.), and the Malayan Indian Congress (M.I.C.) - originally allied solely to contest elections. The Alliance was so successful in the 1955 central and state elections, when it won 51 of the 52 central seats and formed the government in each of the states, that the formula was continued. At times during the succeeding years there were signs of internal strains between the different racial groups within the party, but on each occasion it managed to arrive at a compromise which kept the Alliance together. In the next central and state elections in 1959 the Alliance once again emerged as the dominant party in central politics and won power in all but two of the state governments. As in India the dominance of one party in both levels of government appears to have contributed to harmony in inter-governmental relations, for what friction there has been between governments has occurred mostly in the north-eastern states where the Pan-Malayan Islamic Party controlled the state governments. Within the wider Malaysian federation, the Alliance pattern has been extended to encompass coalitions of the major local parties in the Borneo states. The increased Alliance central majority as a result of the 1964 general election shows the continued ability of the Alliance Party to coalesce the variety of communities in the federation. It is highly significant, that the one occasion when the Alliance pattern was not extended to bring the

People's Action Party of Singapore into a partnership in federal decision-making, the result was considerable political and racial tension and ultimately the separation of Singapore.

These examples make it abundantly clear that an enormous responsibility rests on the political parties of Canada as the main instruments upon which the federation must depend for the development of federal cohesion and consensus. No constitutional provisions by themselves can ensure that the political parties will achieve this. Agreement, as in India,¹ by political parties upon a code of conduct eschewing activity which would exploit and aggravate linguistic, religious, and cultural differences might help, but ultimately success will depend on the ability and conscious effort of the Canadian political parties to reconcile internal diversities and to achieve a federal consensus.

The extent to which the Canadian political parties will succeed in this task will depend on the quality of their leadership. The success of the Indian National Congress and the Malaysian Alliance have been in no small measure due to combination of diplomacy and positive leadership shown by such men as Jawaharlal Nehru and Tunku Abdul Rahman. Vigorous leadership by itself is not enough; tact and diplomacy

¹ See Statement Issued by the National Integration Conference, 28 September - 1 October 1961 (Delhi, 1962), pp. 11-13.

are essential where different cultural groups must be reconciled, as the failures of Roy Welensky in Central Africa and Grantley Adams in the West Indies make abundantly clear. But mere diplomacy by itself is insufficient, too, for a positive leadership is needed to draw the loyalty of different groups within a federation. In Nigeria, Prime Minister Balewa's exceptional diplomatic skill in keeping coalition governments together in the end proved insufficient. If the Canadian political parties are to succeed in their task of creating and maintaining federal cohesion, they will require leadership that is both diplomatic and dynamic.

Chapter 8

OFFICIAL LANGUAGES AND SAFEGUARDS

1. Official languages

In most federations composed of diverse linguistic communities, the question whether there should be a single or two or more official languages has arisen. Linguistic minorities have usually pressed for the recognition of their languages as official federal languages because of anxiety that otherwise they would be handicapped in participating in federal affairs. On the other hand, nationalists have generally stressed the importance of a single national language, not only to facilitate inter-regional communication and administration but also to provide a focus for unity. These opposing points of view have frequently clashed sharply and, because language can affect access to federal jobs and power, the issue has invariably been an explosive one.

It should be noted at the outset that two features distinguish the situation in most of the newer multi-cultural federations from that in Canada. First, in most of these federations, notably India, Pakistan, Malaysia and Nigeria, there have been more than two major linguistic groups.¹ Thus, in India there are some ten linguistic groups each at least as populous and as distinctive as the French Canadians in Canada. In Pakistan the major linguistic division is between

¹ See the tables in Appendix 2 for the distribution of population by language in each of these federations.

the Bengalis and the West Pakistanis, but the latter province itself contains a variety of linguistic groups speaking Punjabi, Sindhi, Pushtu, Baluchi, and Urdu. In Malaysia, there are the three main races of the peninsula - the Malays, the Chinese, and the Indians - each speaking their own languages, and a variety of other linguistic groups in the Borneo states. The Nigerian scene has been dominated by the three main linguistic groups - the Hausa, the Yoruba, and the Ibo - while other linguistic groups make up another 37 per cent of the federal population. Thus, in these federations the issue has normally been one of multi-lingualism rather than of bilingualism. In a sense this is also true of Switzerland, although it is worth noting that only 5 per cent of the Swiss population speaks neither German nor French as a mother tongue while 13 per cent of Canadians consider neither English nor French their mother tongue.¹ In those federations where there are more than two major linguistic groups, the issue of official language becomes complicated by the fact that few statesmen or civil servants, let alone citizens, can be expected to become fluent in all the languages of the different linguistic groups within a federation. In such situations the usual policy seems to have been to recognize the languages of all the major linguistic groups within a federation, but to select one or two 'link-languages' as the languages to be used for purposes of central government and inter-provincial commun-

¹ Appendix 2, tables 1 and 2

cation. Thus, each citizen would be expected to become bilingual, learning his own regional language and the link-language (or tri-lingual where there are two link-languages as in India). In general form this is the pattern adopted in India where Hindi and English are the link-languages, in Pakistan where Urdu, Bengali and for an interim period English are the link-languages, in Malaysia where Malay and for an interim period English are the link-languages, and in Nigeria where English is the link-language.

A second factor distinguishing the newer multi-cultural federations from Canada is the position of English. Although in none of them is English the mother tongue of a large or distinctive regional group, the English language did serve during the colonial period as the lingua franca within most of these countries, even among the élites of the nationalist movements. This has led to clashes between those who would prefer to retain English as an official link-language and those who would prefer to select the language of the largest regional group. The advocates of English point out that the choice of one indigenous language would give a special advantage to one linguistic group in the competition for central posts and power. But advocates for the selection of an indigenous national language have usually argued that it would better symbolize the federation's cultural independence, and also that it would serve as a means to better communication between the educated élites and the non-English speaking masses. Thus, in the newer multi-cultural federations it has

been the linguistic minorities who have agitated for the retention of English as an official language, and the major linguistic groups which have pressed for the adoption of their own language as the official federal language.

In the three Asian federations, the question of national language has proved extremely controversial and a serious threat to federal unity. The situation in Pakistan perhaps has approximated most closely to that in Canada since the major issue has been whether Urdu should be the single national language or Bengali should be a second national language. One commentator on politics in Pakistan has even said that: "This single issue aroused more heated feelings than any other".¹ Prior to partition, Urdu had been regarded as the principal language of Muslim India. Bengali, by contrast, was the language of a single province, and, moreover, was suspect elsewhere in Pakistan because of its links with Hindu Bengal. But the Bengalis cherished their language, and feared that, if Urdu were the only official language, they would be placed at a disadvantage in obtaining positions in the central public services and in playing a part in federal affairs. What further annoyed the Bengalis was that since East Bengal contained a majority of the population of Pakistan, the Bengalis felt entitled to the recognition of their language as an official federal one. When Pakistan was created, Jinnah began by insisting bluntly that, in the interests of national

¹K. Callard, Pakistan, A Political Study (London, 1957), p. 182.

unity, Urdu would be the only official language of Pakistan. When the Interim Report of the Basic Principles Committee reiterated this principle, there was a storm of protest, such that when the Committee next reported to the Constituent Assembly no mention of any official language was made. The bitter struggle continued until the Committee's 1954 report retreated further, recommending the recognition of both Urdu and Bengali, although it did suggest that "the State take all measures for the development and growth of a common language".¹ Even this latter goal was abandoned by the 1956 Constitution, which recognized both Urdu and Bengali as 'State languages', and also provided for the continued use of English for official purposes for an interim period of twenty years.² The 1962 Constitution continued this arrangement, but added the qualification that after ten years a commission should be appointed to report on the replacement of English for official purposes.³ Thus, Pakistan is committed to official bilingualism for all federal purposes. This policy conceded under persistent pressure, has helped to allay Bengali anxieties and appears to have reduced internal tensions.

In India the problem has been complicated by the large number of regional languages. Clearly, there was a need for

¹Basic Principles Committee, Report (as adopted, 1954), para. 276.

²Art. 214.

³Art. 215.

some common linguistic medium for federal affairs and for communication between linguistic groups since statesmen and citizens could not be expected to be fluent in ten different languages. English had served as the lingua franca of the westernizing élite which led the movement for independence, but there was a strong desire to replace it by an indigenous language which could provide a basis for a national cultural revival. Furthermore, only one per cent of the population was literate in English, while Hindi, spoken by 42 per cent of the population appeared to be the logical choice. But the Dravidian-speaking middle classes in the south, which were more at home in English, feared that their opportunities to participate in central affairs would be reduced if English were replaced by Hindi. Consequently, there was a lengthy and heated debate in the Constituent Assembly over the official language provisions. The compromise eventually embodied in the Constitution recognized the thirteen major regional languages and Sanskrit as "languages of India" with equal status, selected Hindi as the "official language" for all Indian purposes, provided that English would continue as an official language for fifteen years in order to accommodate the southerners, and specified the establishment of official language commissions to advise on progress in the use of Hindi.¹ But tension over the issue continued to smoulder, and when the first

¹ Constitution of India, 1950, arts. 343-9, and Eighth Schedule (see Appendix 6 for reproduction of these provisions).

Official Language Commission reported in favour of replacing English by Hindi, the discontent and anxieties of the non-Hindi speakers burst into the open.¹ Southern critics bitterly opposed these recommendations, and there were widespread instances of popular demonstrations and the obliteration of Hindi signs in the south. Faced with this fierce expression of opinion, the Congress retreated, agreeing at its 1958 annual session to a compromise in which the Hindi zealots were to be satisfied by the 'formal' change to Hindi as an official language in 1965, but the non-Hindi groups were to be placated by the continued use of English for official purposes after 1965. Procrastination in implementing this formula provoked growing discontent, however, and when in April 1963 the Official Languages Bill was finally introduced the Indian Parliament witnessed some of the wildest scenes in its history. Nevertheless, the bill was eventually passed. It provided for the continued use of English for official purposes without a time limit, but also provided for a committee of Parliament in 1975 to review and consult the states about the progress of the acceptance of Hindi as a single official language. Thus, India has for the time being committed itself to the 'three language formula' whereby trilingualism is the goal for each citizen, the three languages being the two link-languages of Hindi and English, and the third language being the regional language of the

¹Report of the Official Language Commission, 1956 (New Delhi, 1957).

person concerned. For all- India purposes - for the central government or communication between states - Hindi and English operate as official languages, while a state may select its own regional language or languages for official purposes.

In Malaya and Malaysia, language has been one of the issues on which the most extreme positions have been taken. The Malays have insisted upon Malay as the official language since it is indigenous to the peninsula, and they have opposed English because it would favour the immigrant races. On the other hand, many of the Chinese and Indian citizens of the federation have had little opportunity to learn to speak Malay fluently, and they would clearly be handicapped if Malay were to become the sole federal language. The 1957 Constitution incorporated a compromise whereby in addition to Malay as a 'national language', English would continue to be used for an interim period of ten years, with the central Parliament deciding whether English should then be abandoned.¹ Following independence the Malayan central government continued to reiterate its determination to make Malay the country's sole official language by 1967, the first occasion on which this would be permitted by the Constitution. When the federation was widened into Malaysia, however, a concession was made to the new acceding states, guaranteeing that in these states, English would continue to be used for a period of at least ten years after they joined the

¹ Constitution of the Federation of Malaya, 1957, art. 152. This is reproduced in Appendix 6 under the Malaysian Constitution, art. 152.

federation.¹

In Nigeria, the official language issue has caused less political tension. The most widely spoken indigenous language, Hausa, was spoken by only 28 per cent of the federal population, and, therefore, its adoption as the official federal language was never a serious possibility. Instead, English, which was already widely accepted among the educated classes as a lingua franca was prescribed as the single official federal language.²

In Rhodesia and Nyasaland the same choice was made.³ It is true that in Central Africa, as in Nigeria, English was the lingua franca of the educated classes, but in this case English was also the mother tongue of the dominant racial minority and, therefore, helped further to reinforce the impression that it was the settlers who were the chief beneficiaries of the federal system.

What lessons does the experience of these federations provide for Canada? First of all, it is clear that in most cases where the language of major regional linguistic groups has been denied recognition as a federal language, tension and bitterness has resulted. In many federations, therefore, two languages have been recognized as official for all central and inter-regional purposes. The examples are Hindi and English

¹ Constitution of the Federation of Malaysia, 1963, arts. 161, 161F (see Appendix 6).

² Constitution of the Federal Republic of Nigeria, 1963, s. 59.

³ Constitution of the Federation of Rhodesia and Nyasaland, 1953, s. 7.

in India, Urdu and Bengali in Pakistan,¹ Malay and for an interim period English in Malaya and Malaysia. Switzerland has even gone so far as to recognize three official languages on a permanent basis.² In federations where there are more than two or three major languages, sometimes two classes of languages have been recognized. Thus in India, Hindi and English are 'official languages' for the central government, but some fourteen languages are recognized as 'languages of India'. The Swiss Confederation deems three languages as 'official' but recognizes four as 'the national languages of Switzerland'.³ Such a solution might be appropriate in Canada for the linguistic groups which speak neither English nor French.

In India, Pakistan, and Malaysia there was provision for the continued use of English as a second or third official language, until the minority linguistic groups could learn the official indigenous language, with a variety of commissions being established to make recommendations as the change-over progressed. Similar interim arrangements might be useful in Canada to bridge the gap until the time when the official languages chosen are widely enough spoken not to handicap any particular group seriously.

¹English has also been so recognized for an interim period in Pakistan.

²Federal Constitution of the Swiss Confederation, 1874, art. 116 (see Appendix 6 of this study).

³Loc. cit.

2. Constitutional Guarantees

In addition to the recognition of official federal languages most multi-cultural federations have included guarantees to linguistic minorities about the use of their languages and the establishment of schools in which these languages might be learned.¹ Many of these provisions were designed to protect intra-provincial minorities from the majorities within the provinces, and, therefore, have already been described in chapter 4, section 4 of this study. In the case of provincial majorities, detailed safeguards of this nature were considered less necessary, since most matters of linguistic significance, including control over primary and secondary education were usually placed in the hands of the autonomous provincial governments.² The main guarantees required by provincial majorities, then, concerned freedom from discrimination in the opportunity to participate in federal affairs and the central public services.³ In India, Malaysia and Nigeria the justiciable fundamental rights which guaranteed freedom from discrimination on racial, linguistic, religious or regional grounds applied equally to central and provincial governments.

¹ For the actual constitutional provisions in these federations see Appendix 6.

² See Chapter 5 and Appendix 3. Malaya, and Rhodesia and Nyasaland (with respect to settler education) were the only significant exceptions.

³ See Chapter 7, section 4.

This was also true of the 'Principles of Law-Making and of Policy' in the 1962 Constitution of Pakistan. Similarly, the guarantees to specific linguistic or racial groups, or to certain backward classes have usually applied equally to central as well as to provincial governments.¹ Thus, in these federations the position of cultural minorities has been protected by constitutional safeguards which when breached came under the jurisdiction of the courts.

Such guarantees of individual rights against racial, religious or regional discrimination, and of collective rights to linguistic and educational distinctiveness for specified linguistic and cultural minorities have contributed to the allaying of minority fears in these multi-cultural federations. But ultimately the reconciliation of linguistic diversities in a cohesive federation has depended on the spirit of toleration and compromise shown by the majority groups. This has been perhaps the strongest factor in the troubled but relative success of such multi-cultural federations as Switzerland, India, Malaysia, and for a time Nigeria, and it was the decline or absence of such a spirit which lay at the root of the disintegration of the Central African and West Indian federations, and the resort to military rule in Pakistan and Nigeria. This suggests a serious warning to English-speaking Canadians who would insist upon the right of the majority

¹For the details of these guarantees, see Chapter 4, section 4.

always to have its way. Indeed, the essential point about a federal system is that federalism itself is a denial of simple majoritarian democracy and represents instead what might be called balanced democracy.



